

CITY UTILITIES COMMITTEE

AGENDA

JUNE 1, 2010

A. ADOPTION OF AGENDA

B. APPROVAL OF MINUTES

CONSENT

C. ORDINANCES FOR FIRST READING

- 10-O-0939 (1) An Ordinance by City Utilities Committee to amend Chapter, Article V, Division IV, Section 297 of the Atlanta City Code of Ordinances, entitled "City of Atlanta Grease Management Ordinance" (§154-297 et seq.) to adjust Wastewater Discharge Permit Fees; and for other purposes. **(To be advertised for a Public Hearing)**
- 10-O-0940 (2) An Ordinance by City Utilities Committee to amend Article V of Chapter 154 of the Atlanta City Code entitled "Sewage Disposal" (§154-196 et seq.); to create a fee for the issuance of an Industrial Wastewater Discharge Permit; to create a fee for Annual Inspections; and for other purposes. **(To be advertised for a Public Hearing)**

REGULAR

D. COMMUNICATION

- 10-C-0915 (1) A Communication by Council President Ceasar C. Mitchell appointing **Mr. Kevin Perry** to serve as a member of the Keep Atlanta Beautiful Board. This appointment is for a term of two (2) years; scheduled to begin on the date of Council confirmation.

E. ORDINANCES FOR SECOND READING

- 10-O-0805 (1) An Ordinance by City Utilities Committee to authorize the revision in Application Fees for the abandonment of public streets pursuant to the provision of Chapter 138, Section 138-9 and Appendix B of the Code Of Ordinances, City of Atlanta, Georgia; and for other purposes. **(Public Hearing held 5/27/10)**

City Utilities Committee Agenda
June 1, 2010
Page Two

ORDINANCES FOR SECOND READING (CONT'D)

- 10-O-0807 (2) An Ordinance by City Utilities Committee authorize the Chief Financial Officer to amend the FY 2010 (2009 Water and Wastewater Bond Fund-5066) Budget in the amount \$2,062,919.00 to transfer funds from the Capital Projects Reserve (5066) for Appropriations and to add to appropriations funds R. M. Clayton Compliance Upgrades Project; and for other purposes.
- 10-O-0808 (3) An Ordinance by City Utilities Committee to amend Article II of Chapter 74 entitled "Soil Erosion and Sedimentation Control" (§74-36 et seq.) to comply with the requirements of the Georgia Erosion and Sedimentation Act of 1975 (O.C.G.A. §12-7-1 et seq.); to incorporate the requirements of the National Pollutant Discharged Elimination System; to clarify the regulation of ephemeral streams; and for other purposes.
- 10-O-0904 (4) An Ordinance by City Utilities Committee to authorize the revision in permit fees for Encroachments pursuant to the provisions of Chapter 138, Section 138-20 and Appendix B of the Code of Ordinances, City of Atlanta, Georgia; to add an Annual Inspection Fee to all Encroachment Agreements; and for other purposes. **(Public Hearing held 5/27/10)**
- 10-O-0905 (5) An Ordinance by City Utilities Committee to authorize the revision of Annual Fees for Recycling pursuant to the provisions of Chapter 130, Section 130-82 and Appendix B of the Code of Ordinances, City of Atlanta, Georgia; and for other purposes. **(Public Hearing held 5/27/10)**

F. RESOLUTIONS

- 10-R-0937 (1) A Resolution by City Utilities Committee authorizing the Mayor to enter into Renewal Agreement No. 2 with Rockdale Pipeline, Inc./Integral Municipal Services, Inc., Joint Venture, for FC-30070000044, Annual Contract for Pipe Laying, on behalf of the Department of Watershed Management for **Time-Only**; and for other purposes.

City Utilities Committee Agenda
June 1, 2010
Page Three

RESOLUTIONS (CONT'D)

- 10-R-0938 (2) A Resolution by City Utilities Committee authorizing the Mayor or designee to encumber Phase Two (2) funding in the amount of \$44,673,970.80 for the Agreement with GSC Atlanta, Inc., for FC-4747 South River Tunnel and Pumping Station on behalf of the Department of Watershed Management; all contracted work will be charged to and paid from Fund, Department Organization and Account Numbers listed; and for other purposes.
- 10-R-0943 (3) A Resolution by City Utilities Committee authorizing the Mayor to enter into a Cost Share Agreement with the United States Army Corps of Engineers ("USACE") to fund a Watershed River Intake and Erosion Control Improvement Project for Defoors Island in an amount not exceed \$2,000,000.00; all contracted work will be charged to and paid from Fund, Department Account and Organization Number and PTAE0 listed; and for other purposes.

G. PAPER HELD IN COMMITTEE

- 10-C-0608 (1) A Communication by Councilmember Joyce M. Sheperd appointing **Ms. Paulette White Scott** to serve as a member of the Keep Atlanta Beautiful Board. This appointment is for a term of two (2) years, scheduled to begin on the date of Council confirmation. **(Held 4/27/10, awaiting Ms. White Scott to appeal before the committee.)**

H. REQUESTED ITEMS

1. Councilmember Archibong made a request to receive periodic update on the Water Tank Painting and Structural Repair from the Department of Watershed Management. **First Report due on August 31, 2010.**
2. Councilmember Hall requested that the Department of Watershed Management provide the committee with an overview of all of its Capital Improvement Plan Projects.

I. ITEM NOT ON THE AGENDA

J. COMMENTS FROM THE PUBLIC

K. ADJOURNMENT

**AN ORDINANCE BY
CITY UTILITIES COMMITTEE**

10-0-0939

AN ORDINANCE TO AMEND CHAPTER 154, ARTICLE V, DIVISION IV, SECTION 297 OF THE ATLANTA CITY CODE OF ORDINANCES, ENTITLED "CITY OF ATLANTA GREASE MANAGEMENT ORDINANCE" (§ 154-297 *et seq.*) TO ADJUST WASTEWATER DISCHARGE PERMIT FEES; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta ("City") is responsible for the management, operation, and maintenance of its sanitary and combined sewer system; and

WHEREAS, the City has experienced sewer overflows as a result of blockages caused by the discharge of fats, oils, and grease by food service, sales, and processing establishments throughout its sewer system; and

WHEREAS, in accordance with the First Amended Consent Decree, Grease Management Plan, the City adopted Ordinance 01-O-0038 January 23, 2001 to protect its sewer system from the damaging effects of the discharge of fats, oils, and grease; and

WHEREAS, 02-O-2090, adopted by City Council September 2, 2003 and approved by the Mayor September 10, 2003, increased the wastewater discharge permit fees to recover costs incurred by the City in the administration of the Grease Management Ordinance; and

WHEREAS, fees should be increased to recover costs incurred by the City in the administration of the ordinance,

**THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA HEREBY ORDAINS
AS FOLLOWS:**

SECTION 1: That Section 154-297.02 of the Atlanta City Code shall be amended to read as follows:

Sec. 154-297.02 Food service establishment (grease trap) regulations/existing installations.

- (a) *Permit required.* The owner or operator (hereinafter called the user) of a food processing, sales, or service establishment which discharges wastewater into the city's sewer collection system, installed before the adoption of the section, shall obtain a food service wastewater discharge permit. This permit shall be obtained prior to the issuance of any business license issued by the city. Failure to obtain the food service wastewater discharge permit shall be grounds for revocation or denial of the city business license.

- (1) There will be a fee for a food service wastewater discharge permit as set forth in the schedule below.

Number of Grease Traps	Fee
0—5	\$350.00
6—10	700.00
11—15	1,050.00
16—20	1,400.00
21—25	1,750.00
26—30	2,100.00
31—35	2,450.00
36—40	2,800.00
41—45	3,150.00
46—50	3,500.00
51—55	3,850.00
56—60	4,200.00

For each five additional traps in excess of 60 traps, the maximum fee shall be increased by \$350.00.

- (2) Services and related fees.
- (a) A re-inspection fee of one hundred dollars (\$100.00) for each grease trap shall be charged for any facility that fails any grease trap inspection, in addition to any fines that may be imposed by the courts for any other violations as provided in this section.
 - (b) A plan review fee of one hundred twenty-five dollars (\$125.00) shall be charged for review of plans for grease trap installation.

Service	Fee
Plan Review	125.00
Re-inspection	100.00

- (3) The commissioner will evaluate these fees annually, based on the cost to the city of operation and maintenance, and adjust such fees administratively to ensure full cost recovery; provided however, a fee adjustment of less than ten percent per year shall not require approval of the city council. Any such fee adjustment shall be posted in the office of the municipal clerk and permittees shall be given written notice prior to the time for renewal of annual permits.

- (4) **Application.** All information requested in the food service wastewater discharge Permit application shall be certified by the applicant as true and complete prior to review for approval. The application shall apply to all grease traps located at the same facility having the same street address and operated by the same owner and/or management (referred to as "user"). Each grease trap shall be identified by a unique identifier selected and noted in the application by the user. The commissioner shall review completed applications for approval within 30 days of receipt.
- (5) Permit conditions may include, but are not limited to, the following:
- a. Permit duration;
 - b. Permit fee;
 - c. Permit non-transfer;
 - d. Frequency of inspection;
 - e. Pretreatment requirements;
 - f. Maintenance requirements;
 - g. Limitations on time or rate of discharge;
 - h. Compliance schedules;
 - i. Requirements for maintenance of records and submission of reports;
 - j. Statement of permission to the commissioner and other duly authorized employees of the city, to enter upon the user's property without prior notification for the purposes of inspection, observation, photography, records examination and copying, measurement, sampling or testing; and/or;
 - k. Other conditions deemed necessary by the commissioner to ensure compliance with this article or other applicable ordinances, laws, or regulations.
- (6) **Denial of permit.** If a permit for a location is denied, the applicant will be notified within 60 calendar days of the commissioner's determination to deny the application.
- a. *Notification.* The applicant will be advised in writing of the specific cause for the denial.

- b. *Process.* An applicant who is denied a permit under this article shall have the right to appeal such denial to the mayor. The appeal shall be filed within three business days after the notice of denial is received.
- (b) Replacement of an existing grease trap shall be subject to the standards applicable to new installation of a grease trap set out in this section, unless otherwise approved by the commissioner pursuant to other authority set out in Part 154 of the Code.

SECTION 2. That fees listed in this section shall be established by City Council from time to time and may appear in Appendix B of the Atlanta City Code entitled, "Fees."

SECTION 3. That the effective date of fees increased by this ordinance shall be the first day of the month of the next billing period following adoption by the Council and approval by the Mayor.

SECTION 4. All fees and fines collected in accordance with this ordinance shall be deposited to the Water/Sewer Enterprise Fund in the following fund, center, and account: 5051, 170604, 3442701 Permits, Grease.

SECTION 5. That this ordinance shall be effective upon approval by the Mayor or upon its becoming law without the Mayor's approval.

SECTION 6. That all existing ordinances or parts of ordinances in conflict with this ordinance shall be waived to the extent of the conflict.

Part II: Legislative White Paper: (This portion of the Legislative Request Form will be shared with City Council members and staff)

A. To be completed by Legislative Counsel:

Committee of Purview: City Utilities Committee

Caption: AN ORDINANCE TO AMEND CHAPTER 154, ARTICLE V, DIVISION IV, SECTION 297 OF THE ATLANTA CITY CODE OF ORDINANCES, ENTITLED "CITY OF ATLANTA GREASE MANAGEMENT ORDINANCE" (§ 154-297 *et seq.*) TO ADJUST WASTEWATER DISCHARGE PERMIT FEES; AND FOR OTHER PURPOSES.

Council Meeting Date: June 7, 2010

Requesting Dept.: Watershed Management

B. To be completed by the department:

1. Please provide a summary of the purpose of this legislation (Justification Statement).

Example: *The purpose of this legislation is to anticipate funds from a local assistance grant to purchase child safety seats.*

The purpose of this legislation is to AMEND CHAPTER 154, ARTICLE V, DIVISION IV, SECTION 297 OF THE ATLANTA CITY CODE OF ORDINANCES, ENTITLED "CITY OF ATLANTA GREASE MANAGEMENT ORDINANCE" (§ 154-297 *et seq.*) TO ADJUST WASTEWATER DISCHARGE PERMIT FEES; AND FOR OTHER PURPOSES.

2. Please provide background information regarding this legislation.

Example: *The task force of homelessness conducted a study regarding homelessness, its impact and consequences on the City. This resolution reflects the Mayor's desire to open a twenty-four hour center that will respond to the needs of the homelessness in Atlanta.*

The City is required by the First Amended Consent Decree, Grease Management Plan, to protect its sewer system from the damaging effects of the discharge of fats, oils, and grease. The wastewater discharge permit fees have not been adjusted since 2003. The proposed fee increase is from \$300 per grease trap to \$350 per grease trap in a tiered structure (see attached ordinance for fees in chart form and explanation of tiered structure). This change is in response to regulatory requirements, city staffing levels, and rising costs. The ordinance also proposes a new fee of \$125.00 for grease trap installation plan review.

3. If Applicable/Known:

(a) **Contract Type (e.g. Professional Services, Construction Agreement, etc):**

(b) **Source Selection:**

(c) Bids/Proposals Due:

(d) Invitations Issued:

(e) Number of Bids:

(f) Proposals Received:

(g) Bidders/Proponents:

(h) Term of Contract:

4. Fund Account Center (Ex. Name and number):

Fund: 5051 Account: 170604 Center: 3442701

5. Source of Funds: *Example: Local Assistance Grant* Inspection Fees, Plan Review Fees and Permit Fees

6. Fiscal Impact: There will be an approximate increase in revenue of \$100,250.00 per year.

Example: This legislation will result in a reduction in the amount of _____ to Fund Account Center Number _____.

7. Method of Cost Recovery:

Examples:

- a. Revenues generated from the permits required under this legislation will be used to fund the personnel needed to carry out the permitting process.*
- b. Money obtained from a local assistance grant will be used to cover the costs of this Summer Food Program.*

This Legislative Request Form Was Prepared By: Kenna Laslavic

TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE

ATTN: Chief of Staff

Dept.'s Legislative Liaison: _____ Maisha L. Wood _____

Contact Number: _____ (404) 330-6887 _____

Originating Department: _____ Department of Watershed Management _____

Committee(s) of Purview: _____ City Utilities _____

Chief of Staff Deadline: _____ May 11, 2010 _____

Anticipated Committee Meeting Date(s): _____ June 1, 2010 _____

Anticipated Full Council Date: _____ June 7, 2010 _____

Legislative Counsel's Signature: _____ Marc Gordon _____

Commissioner Signature: _____ Robert J. Fulton _____

Chief Procurement Officer Signature: _____ n/a _____

CAPTION

AN ORDINANCE TO AMEND CHAPTER 154, ARTICLE V, DIVISION IV, SECTION 297 OF THE ATLANTA CITY CODE OF ORDINANCES, ENTITLED "CITY OF ATLANTA GREASE MANAGEMENT ORDINANCE" (§ 154-297 *et seq.*) TO ADJUST WASTEWATER DISCHARGE PERMIT FEES; AND FOR OTHER PURPOSES.

FINANCIAL IMPACT (if any): n/a

Mayor's Staff Only

Received by CPO: _____ Received by LC from CPO: _____
(date) (date)

Received by Mayor's Office: 5/20/10 Camille Reviewed by: _____
(date) (date)

Submitted to Council: _____
(date)

**AN ORDINANCE BY
CITY UTILITIES COMMITTEE**

10-0-0940

AN ORDINANCE TO AMEND ARTICLE V OF CHAPTER 154 OF THE ATLANTA CITY CODE ENTITLED "SEWAGE DISPOSAL" (§ 154-196 *et seq.*); TO CREATE A FEE FOR THE ISSUANCE OF AN INDUSTRIAL WASTEWATER DISCHARGE PERMIT; TO CREATE A FEE FOR ANNUAL INSPECTIONS; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta ("City") owns and operates the Publicly Owned Treatment Works ("POTW") as defined by section 212 of the Clean Water Act, 33 U.S.C. § 1292; and

WHEREAS, the City is required to operate an Industrial Pretreatment Program under Part III of its National Pollutant Discharge Elimination System (NPDES) Permits for the discharge of wastewater, issued pursuant to O.C.G.A. § 12-5-20 *et seq.* by the Georgia Department of Natural Resources, Environmental Protection Division; and

WHEREAS, the City is required by 40 C.F.R. § 403.8(f)(1)(v) to inspect industrial users to determine compliance or noncompliance with applicable pretreatment standards and requirements; and

WHEREAS, the City is required by 40 C.F.R. § 403.8(f)(2)(v) to inspect and sample the effluent from each significant industrial user at least once a year; and

WHEREAS, 98-O-1835, adopted by Council October 5, 1998 and approved by the Mayor October 13, 1998, rescinded Chapter 154 Article V of the Code of Ordinances and substituted in lieu thereof a new Article V of Chapter 154 to provide for regulations, rates and charges, administration, inspection and entry, and enforcement authority for wastewater services; and

WHEREAS, 07-O-0937, adopted by Council June 4, 2007 and approved by the Mayor June 12, 2007, amended Article V of Chapter 154 to provide for modification to the Industrial Pretreatment Program and to set allowable pollutant levels; and

WHEREAS, fees should be charged to recover costs incurred by the City in the administration of the Industrial Pretreatment Program,

**THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA HEREBY ORDAINS
AS FOLLOWS:**

SECTION 1: That a new section of the Atlanta City Code is hereby created in Chapter 154, Article V, Division 2, Subdivision II, entitled "Permit Fee," and shall be § 154-231, and shall read as follows:

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Sec. 154-231. Permit Fee.

There shall be a permit fee of fifty dollars (\$50.00) for the issuance of an industrial wastewater discharge permit in accordance with § 154-226 *et seq.*

SECTION 2. That a new section of the Atlanta City Code is hereby created in Chapter 154, Article V, Division 2, Subdivision II, entitled "Annual Inspection Fee," and shall be § 154-232, and shall read as follows:

Sec. 154-232. Annual Inspection Fee.

There shall be a fee for an annual inspection conducted by the City of each industrial user pursuant to § 154-242 of the Atlanta City Code and as required by 40 C.F.R. § 403.8(f)(1)(v), and said fee shall be \$50.00.

SECTION 3. That a new section of the Atlanta City Code is hereby created in Chapter 154, Article V, Division 2, Subdivision II, entitled "Adjustment of Fees," and shall be § 154-233, and shall read as follows:

Sec. 154-233. Adjustment of Fees

The Commissioner of Watershed Management may evaluate the fees set out in §§ 154-231 and 154-232 based on the cost to the city of operation of the industrial pretreatment program, and may adjust said fees in accordance with § 154-297.01(a)(3).

SECTION 4. All fees collected in accordance with this ordinance shall be deposited to the following fund: 5051, 170603, 3442553-Industrial Waste

SECTION 5. That this ordinance shall be effective upon approval by the Mayor or upon its becoming law without the Mayor's approval.

SECTION 6. That all existing ordinances or parts of ordinances in conflict with this ordinance shall be waived to the extent of the conflict

Part II: Legislative White Paper: (This portion of the Legislative Request Form will be shared with City Council members and staff)

A. To be completed by Legislative Counsel:

Committee of Purview: City Utilities Committee

Caption: AN ORDINANCE TO AMEND ARTICLE V OF CHAPTER 154 OF THE ATLANTA CITY CODE ENTITLED "SEWAGE DISPOSAL" (§ 154-196 *et seq.*); TO CREATE A FEE FOR THE ISSUANCE OF AN INDUSTRIAL WASTEWATER DISCHARGE PERMIT; TO CREATE A FEE FOR ANNUAL INSPECTIONS; AND FOR OTHER PURPOSES.

Council Meeting Date: June 7, 2010

Requesting Dept.: Watershed Management

B. To be completed by the department:

1. Please provide a summary of the purpose of this legislation (Justification Statement).

Example: The purpose of this legislation is to anticipate funds from a local assistance grant to purchase child safety seats.

The purpose of this legislation is to AMEND ARTICLE V OF CHAPTER 154 OF THE ATLANTA CITY CODE ENTITLED "SEWAGE DISPOSAL" (§ 154-196 *et seq.*); TO CREATE A FEE FOR THE ISSUANCE OF AN INDUSTRIAL WASTEWATER DISCHARGE PERMIT; TO CREATE A FEE FOR ANNUAL INSPECTIONS; AND FOR OTHER PURPOSES

2. Please provide background information regarding this legislation.

Example: The task force of homelessness conducted a study regarding homelessness, its impact and consequences on the City. This resolution reflects the Mayor's desire to open a twenty-four hour center that will respond to the needs of the homelessness in Atlanta.

The City is required to operate an Industrial Pretreatment Program under its National Pollutant Discharge Elimination System Permits. Currently, no fees are being charged for annual inspections or permit issuance. The new fees are proposed to recoup some of the costs of the Industrial Pretreatment program without overburdening industrial wastewater permittees.

3. If Applicable/Known:

(a) Contract Type (e.g. Professional Services, Construction Agreement, etc):

(b) Source Selection:

- (c) Bids/Proposals Due:
- (d) Invitations Issued:
- (e) Number of Bids:
- (f) Proposals Received:
- (g) Bidders/Proponents:
- (h) Term of Contract:

4. Fund Account Center (Ex. Name and number):

Fund: 5051 Account: 5750002 Center: 170603

5. Source of Funds: Example: Local Assistance Grant Inspection Fees and Permit Fees

6. Fiscal Impact: 150 Industrial users x \$50 inspection fee = \$7,500 per year

30 permits issued per year x \$50 permit fee = \$1,500 per year

Total = \$9,000 per year

Example: This legislation will result in a reduction in the amount of _____ to Fund Account Center Number _____.

7. Method of Cost Recovery:

Examples:

- a. Revenues generated from the permits required under this legislation will be used to fund the personnel needed to carry out the permitting process.
- b. Money obtained from a local assistance grant will be used to cover the costs of this Summer Food Program.

This Legislative Request Form Was Prepared By: Kenna Laslavic

TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE

ATTN: Chief of Staff

Dept.'s Legislative Liaison: _____ Maisha L. Wood _____

Contact Number: _____ (404) 330-6887 _____

Originating Department: _____ Department of Watershed Management _____
Committee(s) of Purview: _____ City Utilities _____

Chief of Staff Deadline: _____ May 11, 2010 _____

Anticipated Committee Meeting Date(s): _____ June 1, 2010 _____

Anticipated Full Council Date: _____ June 7, 2010 _____

Legislative Counsel's Signature: _____ *Mark Jones* _____

Commissioner Signature: _____ *Robert G. Hunter* _____

Chief Procurement Officer Signature: _____ n/a _____

CAPTION

AN ORDINANCE TO AMEND ARTICLE V OF CHAPTER 154 OF THE ATLANTA CITY CODE ENTITLED "SEWAGE DISPOSAL" (§ 154-196 *et seq.*); TO CREATE A FEE FOR THE ISSUANCE OF AN INDUSTRIAL WASTEWATER DISCHARGE PERMIT; TO CREATE A FEE FOR ANNUAL INSPECTIONS; AND FOR OTHER PURPOSES.

FINANCIAL IMPACT (if any): n/a

Mayor's Staff Only

Received by CPO: _____ Received by LC from CPO: _____
(date) (date)

Received by Mayor's Office: _____ Reviewed by: _____
(date) (date)

Submitted to Council: _____
(date)



ATLANTA CITY COUNCIL

CEASAR C. MITCHELL
PRESIDENT
ATLANTA CITY COUNCIL

55 TRINITY AVENUE, S.W.
SECOND FLOOR EAST
ATLANTA, GEORGIA 30303
DIRECT (404) 330-6052
MAIN (404) 330-6030
FAX (404) 658-6562
E-MAIL ccmitchell@atlantaga.gov

May 12, 2010

Councilmember Felicia Moore
Atlanta City Council
Committee on Council Chair
55 Trinity Avenue, S.W.
Second Floor East
Atlanta, Georgia 30303

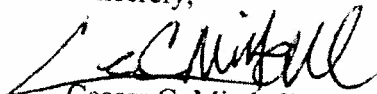
RE: Keep Atlanta Beautiful Board Appointment

Dear Councilmember Moore,

It is with great pleasure that I appoint Mr. Kevin Perry to serve on the Keep Atlanta Beautiful Board. Kevin has served on the KAtIB in the past and was very instrumental in keeping the board's goals moving forward. I am confident he will continue to do so with an unwavering level of commitment.

Attached is a copy of Mr. Perry's resume for your review.

Sincerely,


Ceasar C. Mitchell

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**AN ORDINANCE BY
CITY UTILITIES COMMITTEE**

AN ORDINANCE TO AUTHORIZE THE REVISION IN APPLICATION FEES FOR THE ABANDONMENT OF PUBLIC STREETS PURSUANT TO THE PROVISIONS OF CHAPTER 138, SECTION 138-9 AND APPENDIX B OF THE CODE OF ORDINANCES, CITY OF ATLANTA, GEORGIA; AND FOR OTHER PURPOSES.

WHEREAS, the Department of Public Works has reviewed the fee structure for the administrative process related to the review of street abandonment petitions abutting both commercial tracts and residential lots pursuant to the provisions of Section 138-9 of the City of Atlanta Code of Ordinances; and

WHEREAS, the Department of Public Works has determined that the present amounts charged for the processing of abandonment petitions as set out at Section 138-9 do not reflect the actual administrative costs to the Department; and

WHEREAS, the administrative review and processing of abandonment petitions requires significant administrative and technical resources involving the Department of Public Works staff; and

WHEREAS, the current application fees associated with the approval of said applications is \$2,500.00 for abandoned streets abutting the development of residential subdivisions or commercial or industrial tracts, and \$2,000.00 for abandoned streets abutting individual residential lots; and

WHEREAS, the current application fees presently include the costs of obtaining a mandated real estate appraisal and the costs of a mandated legal advertisement of the proposed abandonment; and

WHEREAS, said appraisal and advertising costs closely approximate the present fees collected to process abandonment petitions.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY ORDAINS, as follows:

Section 1: That Section 138-9(a)(5) of the City of Atlanta Code of Ordinances is amended, as set out below in bold and strikeout text to revise said section as follows:

(5) A fee of ~~\$2,500.00~~ **\$4,500.00** for abandoned streets abutting the development of residential subdivisions or commercial or industrial tracts, or a fee of ~~\$2,000.00~~ **\$4,000.00** for abandoned streets abutting individual residential lots, which fees shall be applied to the cost of the appraisal of the parcel and advertisement of the proposed abandonment which shall be deposited in account number ~~3P02491102M22F03349999~~ 1001.000002.3511717.

Section 138-9(a)(5), as revised will then read as follows:

(5) A fee of \$4,500.00 for abandoned streets abutting the development of residential subdivisions or commercial or industrial tracts, or a fee of \$4,000.00 for abandoned streets abutting individual residential lots, which fees shall be applied to the cost of the appraisal of the parcel and advertisement of the proposed abandonment which shall be deposited in account number 1001.000002.3511717.

Section 2: That Appendix B: Fees, shall be revised, as necessary, to reflect the imposition of fees in accordance with Section 1 above.

Section 3: Said fees shall become effective immediately upon the passage of this Ordinance.

Section 4: That all existing ordinances or parts of ordinances in conflict with this ordinance shall be waived for the purposes of this Ordinance only, and only to the extent of the conflict.

Part II: Legislative White Paper: (This portion of the Legislative Request Form will be shared with City Council members and staff)

A. To be completed by Legislative Counsel:

Committee of Purview: City Utilities Committee

Caption: AN ORDINANCE TO AUTHORIZE THE REVISION IN APPLICATION FEES FOR THE ABANDONMENT OF PUBLIC STREETS PURSUANT TO THE PROVISIONS OF CHAPTER 138, SECTION 138-9 AND APPENDIX B OF THE CODE OF ORDINANCES, CITY OF ATLANTA, GEORGIA; AND FOR OTHER PURPOSES.

Council Meeting Date: June 7, 2010

Requesting Dept: Department of Public Works

B. To be completed by the department:

1. Please provide a summary of the purpose of this legislation (Justification Statement).

The purpose of this legislation is to authorize the revision in application fees for the abandonment of public streets.

2. Please provide background information regarding this legislation.

3. If Applicable/Known:

(a) **Contract Type (e.g. Professional Services, Construction Agreement, etc):**

(b) **Source Selection:**

(c) **Bids/Proposals Due:**

(d) **Invitations Issued:**

(e) **Number of Bids:**

(f) **Proposals Received:**

(g) **Bidders/Proponents:**

(h) Term of Contract:

4. Fund Account Center:

5. Source of Funds:

6. Fiscal Impact:

7. Method of Cost Recovery:

This Legislative Request Form Was Prepared By:

TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE

ATTN: CANDACE BYRD

Dept.'s Legislative Liaison: Rita Braswell

Contact Number: (404) 330-6240

Originating Department: Department of Public Works

Committee(s) of Purview: City Utilities Committee

Chief of Staff Deadline: April 13, 2010

Anticipated Committee Meeting Date(s): June 1, 2010

Anticipated Full Council Date: June 7, 2010

Legislative Counsel's Signature: Saul Schultz

Commissioner Signature: _____

Chief Procurement Officer Signature: _____

CAPTION

AN ORDINANCE TO AUTHORIZE THE REVISION IN APPLICATION FEES FOR THE ABANDONMENT OF PUBLIC STREETS PURSUANT TO THE PROVISIONS OF CHAPTER 138, SECTION 138-9 AND APPENDIX B OF THE CODE OF ORDINANCES, CITY OF ATLANTA, GEORGIA; AND FOR OTHER PURPOSES.

Mayor's Staff Only

Received by CPO: _____
(date)

Received by LC from CPO: _____

Received by Mayor's Office: _____

(date)

Reviewed by: _____

(date)

Submitted to Council: _____

AN ORDINANCE
BY CITY UTILITIES COMMITTEE

10-0-0807

AN ORDINANCE AUTHORIZING THE CHIEF FINANCIAL OFFICER TO AMEND THE FY 2010 (2009A WATER AND WASTEWATER BOND FUND - 5066) BUDGET IN THE AMOUNT OF TWO MILLION SIXTY TWO THOUSAND NINE HUNDRED NINETEEN DOLLARS AND NO CENTS (\$2,062,919.00) TO TRANSFER FUNDS FROM THE CAPITAL PROJECTS RESERVE (5066) FOR APPROPRIATIONS AND TO ADD TO APPROPRIATION FUNDS RM CLAYTON COMPLIANCE UPGRADES PROJECT; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta owns and operates a water and wastewater system; and

WHEREAS, the City of Atlanta, Department of Watershed Management has identified, in connection with the RM Clayton Compliance Upgrades project, the need to fund certain costs from the 2009A Water and Wastewater Bond Fund; and

WHEREAS, these funds should be transferred from the Capital Projects Reserve (5066) for Appropriations to facilitate the use of the funds for the RM Clayton Compliance Upgrades project and other purposes.

THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY ORDAINS as follows:

Section 1: That the Chief Financial Officer is authorized to amend the FY 2010 (2009A Water & Wastewater Bond Fund – 5066) Budget as follows:

TRANSFER FROM APPROPRIATIONS

The amount of: \$2,062,919.00

PTAEO:

<u>Capital Projects</u> <u>Reserve</u>	<u>Task</u>	<u>2009A Water &</u> <u>Wastewater Bond</u> <u>Fund</u>	<u>Facilities Other Than</u> <u>Bldgs/Infrastructure -</u> <u>CIP</u>	<u>City of Atlanta</u>
10200118	135	506621876	5414002	COA

FDOA:

<u>2009A Water &</u> <u>Wastewater Bond</u> <u>Fund</u>		<u>Projects & Grants</u> <u>Budget Summary</u>	<u>Chief Executive</u>
5066	240101	5999999	1320000

<u>Capital Projects</u> <u>Reserve</u>	<u>2009A Water &</u> <u>Wastewater Bond</u> <u>Fund</u>	<u>DEFAULT</u>	<u>DEFAULT</u>	<u>DEFAULT</u>
200118	21876	0000	00000000	00000000

TRANSFER TO APPROPRIATIONS

The amount of: \$2,062,919.00

PTAEO:

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<u>RM Clayton</u> <u>Compliance Upgrades</u>	<u>Task</u>	<u>2009A Water &</u> <u>Wastewater Bond</u> <u>Fund</u>	<u>Facilities Other Than</u> <u>Bldgs/Infrastructure -</u> <u>CIP</u>	<u>City of Atlanta</u>
17102462	103	506621876	5212001	COA

FDOA:

<u>2009A Water &</u> <u>Wastewater Bond Fund</u>	<u>DWM Wastewater</u> <u>Sewer Repair</u>	<u>Projects & Grants</u> <u>Budget Summary</u>	<u>New Sewer Service</u>
5066	170215	5999999	4333000

<u>RM Clayton</u> <u>Compliance Upgrades</u>	<u>2009A Water &</u> <u>Wastewater Bond</u> <u>Fund</u>	<u>DEFAULT</u>	<u>DEFAULT</u>	<u>DEFAULT</u>
102462	21876	0000	00000000	00000000

Section 2: That all ordinances and parts of ordinances that are in conflict with the provisions of this ordinance are waived to the extent of the conflict.

Part II: Legislative White Paper: (This portion of the Legislative Request Form will be shared with City Council members and staff)

A. To be completed by Legislative Counsel:

Committee of Purview: City Utilities

Caption: AN ORDINANCE AUTHORIZING THE CHIEF FINANCIAL OFFICER TO AMEND THE FY 2010 (2009A WATER AND WASTEWATER BOND FUND - 5066) BUDGET IN THE AMOUNT OF TWO MILLION SIXTY TWO THOUSAND NINE HUNDRED NINETEEN DOLLARS AND NO CENTS (\$2,062,919.00) TO TRANSFER FUNDS FROM THE CAPITAL PROJECTS RESERVE (5066) FOR APPROPRIATIONS AND TO ADD TO APPROPRIATION FUNDS RM CLAYTON COMPLIANCE UPGRADES PROJECT; AND FOR OTHER PURPOSES.

Council Meeting Date: May 17, 2010

Requesting Dept.: Watershed Management

B. To be completed by the department:

1. Please provide a summary of the purpose of this legislation (Justification Statement).

Example: *The purpose of this legislation is to anticipate funds from a local assistance grant to purchase child safety seats.*

The purpose of this legislation is to authorize the CFO to amend the FY 2010 Budget (2009A WATER AND WASTEWATER BOND FUND - 5066) in the amount of \$2,062,919.00 to transfer funds from the Capital Projects Reserve (5066) for Appropriations and add to Appropriation funds for the R. M. Clayton Compliance Upgrades project.

2. Please provide background information regarding this legislation.

Example: *The task force of homelessness conducted a study regarding homelessness, its impact and consequences on the City. This resolution reflects the Mayor's desire to open a twenty-four hour center that will respond to the needs of the homelessness in Atlanta.*

The City of Atlanta Department of Watershed Management has identified, in connection with the R. M. Clayton Compliance Upgrades Project, the need to fund certain costs from the 2009A Water and Wastewater Bond Fund to facilitate this project.

3. If Applicable/Known:

(a) **Contract Type (e.g. Professional Services, Construction Agreement, etc):** N/A

(b) **Source Selection:** N/A

(c) Bids/Proposals Due: N/A

(d) Invitations Issued: N/A

(e) Number of Bids: N/A

(f) Proposals Received: N/A

(g) Bidders/Proponents: N/A

(h) Term of Contract: N/A

4. Fund Account Center (*Ex. Name and number*): Various

Fund: _____ Account: _____ Center: _____

5. Source of Funds: *Example: Local Assistance Grant* 2009A Water & Wastewater Bond .

FDOA: 5066 (2009A Water & Wastewater Bond Fund) 170215 (DWM Wastewater Sewer Repair)
5212001 (Consulting/Professional Services) 4333000 (New Sewer Service) 102462 (RM Clayton
Compliance Upgrades) 21876 (2009A Water & Wastewater Bond Fund)

PTAEO: Project# 17102462, Task# 103, Award# 506621876, Expenditure# 5212001, COA

6. Fiscal Impact: N/A

*Example: This legislation will result in a reduction in the amount of _____ to Fund Account
Center Number _____.*

7. Method of Cost Recovery: N/A

Examples:

a. *Revenues generated from the permits required under this legislation will be used to
fund the personnel needed to carry out the permitting process.*

b. *Money obtained from a local assistance grant will be used to cover the costs of this
Summer Food Program.*

This Legislative Request Form Was Prepared By: Ann Crim

TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE

ATTN: Chief of Staff

Dept.'s Legislative Liaison: _____ Maisha L. Wood _____

Contact Number: _____ (404) 330-6887 _____

Originating Department: _____ Department of Watershed Management _____

Committee(s) of Purview: _____ City Utilities _____

Chief of Staff Deadline: _____ April 27, 2010 _____

Anticipated Committee Meeting Date(s): _____ May 11, 2010 _____

Anticipated Full Council Date: _____ May 17, 2010 _____

Legislative Counsel's Signature: _____

Commissioner Signature: _____ Robert J. Hunter xP _____

Chief Procurement Officer Signature: _____ n/a _____

CAPTION

AN ORDINANCE AUTHORIZING THE CHIEF FINANCIAL OFFICER TO AMEND THE FY 2010 (2009A WATER AND WASTEWATER BOND FUND - 5066) BUDGET IN THE AMOUNT OF TWO MILLION SIXTY TWO THOUSAND NINE HUNDRED NINETEEN DOLLARS AND NO CENTS (\$2,062,919.00) TO TRANSFER FUNDS FROM THE CAPITAL PROJECTS RESERVE (5066) FOR APPROPRIATIONS AND TO ADD TO APPROPRIATION FUNDS RM CLAYTON COMPLIANCE UPGRADES PROJECT; AND FOR OTHER PURPOSES.

FINANCIAL IMPACT (if any): \$2,062,919.00

Mayor's Staff Only

Received by CPO: _____ Received by LC from CPO: _____
(date) (date)

Received by Mayor's Office: _____ Reviewed by: _____
(date) (date)

Submitted to Council: _____ (date)

**AN ORDINANCE BY
CITY UTILITIES COMMITTEE**

AN ORDINANCE TO AMEND ARTICLE II OF CHAPTER 74 ENTITLED "SOIL EROSION AND SEDIMENTATION CONTROL" (§ 74-36 *et seq.*) TO COMPLY WITH THE REQUIREMENTS OF THE GEORGIA EROSION AND SEDIMENTATION ACT OF 1975 (O.C.G.A. § 12-7-1 *et seq.*); TO INCORPORATE THE REQUIREMENTS OF THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM; TO CLARIFY THE REGULATION OF EPHEMERAL STREAMS; AND FOR OTHER PURPOSES.

WHEREAS, in October 2001, the Atlanta City Council adopted the Soil Erosion and Sedimentation Control Ordinance in an effort to protect water quality and fulfill the requirements of the Georgia Erosion and Sedimentation Act of 1975, O.C.G.A. § 12-7-1, *et seq.*; and

WHEREAS, House Bill 285, passed in the 2003 Regular Session of the Georgia General Assembly, granted the authority to administer the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, *et seq.*, and the National Pollutant Discharge Elimination System (NPDES) established under that act to the Environmental Protection Division, and subsequently to the City of Atlanta as a Local Issuing Authority; and

WHEREAS, in August 2004, the Atlanta City Council rescinded and readopted the Soil Erosion and Sedimentation Control Ordinance to incorporate the 2003 Regular Session of the Georgia General Assembly's amendments to the Georgia Erosion and Sedimentation Act of 1975 into the ordinance; and

WHEREAS, Senate Bill 155, passed in the 2009 Regular Session of the Georgia General Assembly, amended the Georgia Erosion and Sedimentation Act of 1975 to clarify regulations pertaining to ephemeral streams; and

WHEREAS, in accordance with the provisions set out in O.C.G.A. § 12-7-8(a)(2), the City of Atlanta is required to amend its Soil Erosion and Sedimentation Control ordinance within 12 months of any amendment to the Georgia Erosion and Sedimentation Act of 1975 in order to maintain its status as a Local Issuing Authority; and

WHEREAS, it is in the best interests of the City to harmonize the Soil Erosion and Sedimentation Control Ordinance with the Georgia model ordinance and the requirements of the National Pollutant Discharge Elimination System (NPDES); and

WHEREAS, it is in the best interests of the City to harmonize the Soil Erosion and Sedimentation Control Ordinance with Chapter 74 Article VII §§ 300 *et seq.* (Riparian Buffer Requirements), Chapter 74 Article X §§ 501 *et seq.* (Post Development Stormwater Management), and other sections of the Atlanta City Code; and

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WHEREAS, due to the increased occurrence of abandoned sites, it is in the best interests of the City to clearly state performance bonding requirements,

THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA HEREBY ORDAINS AS FOLLOWS:

SECTION 1: That the title of Article II is hereby amended to read as follows:

ARTICLE II. SOIL EROSION, SEDIMENTATION, AND POLLUTION CONTROL

SECTION 2: That Atlanta City Code § 74-36 entitled "Title, authority and findings" is hereby amended to read as follows:

Sec. 74-36. Title, authority and findings.

- (a) *Title.* This article will be known as the "City of Atlanta Soil Erosion, Sedimentation, and Pollution Control Ordinance."
- (b) *Authority.* This article is enacted to implement the Erosion and Sedimentation Act of 1975, O.C.G.A. § 12-7-1, *et seq.*, as amended in the 2009 Session of the Georgia General Assembly.
- (c) *Findings.* The Council of the City of Atlanta finds that soil erosion and sediment deposition onto lands and into waters within the watersheds of the city are occurring as a result of a need for improvement in the application of proper soil erosion and sedimentation control practices in land clearing, soil movement, and construction activities and that such erosion and sediment deposition result in pollution of state waters and damage to domestic, agricultural, recreational, fish and wildlife, and other resources uses. It is therefore declared to be the policy of the city and the intent of this article to strengthen and extend the present erosion and sedimentation control activities and programs of the city and to provide for the establishment and implementation of a city-wide comprehensive soil erosion and sedimentation control program to conserve and protect the land, water, air and other resources of the city. The city further declares its intention through this article to meet or exceed, where permitted, the requirements of state and federal law regarding the regulation of land-disturbing activities.

SECTION 3: That Atlanta City Code § 74-37 entitled "Definitions" is hereby amended to read as follows:

Sec. 74-37. Definitions.

The following definitions shall apply in the interpretation and enforcement of this article, unless otherwise specifically stated:

- (1) *Approved plan* means an erosion and sedimentation control plan approved in writing by the City of Atlanta or the Fulton or DeKalb Soil and Water Conservation District.
- (2) *Best management practices (BMPs)* means a collection of sound conservation and engineering practices, and vegetative measures to prevent and minimize erosion and resultant sedimentation, which are consistent with, and no less stringent than, those practices contained in the Manual for Erosion and Sediment Control in Georgia.
- (3) *Board* means the Georgia Board of Natural Resources.
- (4) *Certified Personnel or Certified Person* means a person who holds current certification issued by the Georgia Soil and Water Conservation Commission (GSWCC) for completion of appropriate courses as determined by the Commission.
- (5) *City* means the City of Atlanta, which is a local issuing authority as defined herein.
- (6) *Commission* means the Georgia Soil and Water Conservation Commission (GSWCC).
- (7) *Commissioner* means the Commissioner of the Department of Watershed Management, or a designee.
- (8) *Cut* means a portion or area of land surface from which earth has been removed or will be removed by excavation (i.e. the volume between the original ground surface and the excavated surface), and also known as excavation.
- (9) *Department* means the Department of Watershed Management, or its successor agency.
- (10) *Design Professional* means a person currently licensed by the State of Georgia in the field of engineering, architecture, landscape architecture, forestry, geology, or land surveying; or a person that is a Certified Professional in Erosion and Sediment Control (CPESC) with a current certification administered by Certified Professional in Erosion and Sediment Control, Inc., as referenced in Part 1(B)(8) of the NPDES State General Permit.
- (11) *Director* means the director of the Environmental Protection Division of the Department of Natural Resources.
- (12) *District* means the Fulton or DeKalb Soil and Water Conservation District.
- (13) *Disturbed area* means the total area on which land-disturbing activities are to take place.
- (14) *Division* means the Environmental Protection Division of the Department of Natural Resources.
- (15) *Drainage structure* means a device composed of a virtually nonerodible material such as concrete, steel, plastic, or other such material that conveys water from one place to another by

intercepting the flow and carrying it to a release point for stormwater management, drainage control, or flood control purposes.

- (16) *Erosion* means the process by which land surface is worn away by the action of wind, water, ice, or gravity.
- (17) *Erosion and sedimentation control plan* means a plan for the control of soil erosion and sedimentation resulting from a land-disturbing activity. Also known as the "plan."
- (18) *Fill* means a portion or area of land surface to which soil or other solid material has been or will be added (i.e. the volume above the original ground).
- (19) *Final Stabilization* means the installation of permanent vegetation or soil stabilization measures as set out in § 74-43(f) following the cessation of land-disturbing activities on a site.
- (20) *Grading* means altering the shape of ground surfaces to a predetermined condition; this includes stripping, cutting, filling, stockpiling and shaping or any combination thereof and shall include the land in its cut or filled condition.
- (21) *Land-disturbing activity* means any activity which may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands within the state, including, but not limited to, clearing, dredging, grading, excavating, transporting, and filling of land, but not including agricultural practices as described in section 74-38(e).
- (22) *Larger common plan of development or sale* means a contiguous area where multiple separate and distinct construction activities are occurring under one plan of development or sale. For the purposes of this paragraph, "plan" means an announcement; piece of documentation such as a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, or computer design; or physical demarcation such as boundary signs, lot stakes, or surveyor markings, indicating that construction activities may occur on a specific plot.
- (23) *Local issuing authority* means the City of Atlanta acting through its Department of Watershed Management, which has been certified by the Director of the Environmental Protection Division of the Department of Natural Resources as an issuing authority, pursuant to the Erosion and Sedimentation Act of 1975, as amended, O.C.G.A. § 12-7-1 *et seq.* and the rules for erosion and sediment control issued by the division Ga. Comp. R. & Regs. § 391-3-7-.09.
- (24) *Manual for Erosion and Sediment Control in Georgia* means the guide published by the Georgia Soil and Water Conservation Commission as of January 1 of the year in which the land-disturbing activity was permitted, and amendments to the manual approved by the Commission, as specified in O.C.G.A. § 12-7-6(b), adopted by reference in § 74-40(a) of the Atlanta City Code, and commonly referred to as the "Green Book." The Manual for Erosion and Sediment and Control in Georgia is currently available from the Georgia Soil and Water Conservation Commission (<http://www.gaswcc.org>).

- (25) *Metropolitan River Protection Act (MRPA)* means a state law, O.C.G.A. § 12-5-440 *et seq.*, referenced in Article VII Chapter 74 § 314(b) of the Atlanta City Code, which addresses environmental and development-related matters in certain metropolitan river corridors and their drainage basins.
- (26) *Nephelometric turbidity units (NTU)* means numerical units of measure based upon photometric analytical techniques for measuring the light scattered by finely divided particles of a substance in suspension. This technique is used to estimate the extent of turbidity in water in which colloiddally dispersed particles are present.
- (27) *Notice or official notice* means a written communication by the city to the owner, operator, or person conducting land-disturbing activity, including a notice to comply pursuant to § 74-42(d), a stop work order pursuant to §§ 74-42(b), 74-42(c), 74-42(e), or 74-42(f), or a fine pursuant to § 74-42(g). Notice shall be deemed official when it meets one of the following requirements:
- (1) Communicated in writing to the owner or operator via U.S. mail;
 - (2) Hand-delivered to the owner, operator, or person conducting land-disturbing activity; or
 - (3) Posted in a conspicuous location on the site.
- (28) *Notice of Intent (NOI)* means a notification filed with the State to obtain coverage under the NPDES State General Permit for stormwater discharges from a construction site.
- (29) *Notice of Termination (NOT)* means a notification filed with the State to terminate coverage under the NPDES State General Permit for stormwater discharges from a construction site.
- (30) *Operator* means the party or parties that have: (A) operational control of construction project plans and specifications, including the ability to make modifications to those plans and specifications; or (B) day-to-day operational control of those activities that are necessary to ensure compliance with a storm-water pollution prevention plan for the site or other permit conditions, such as a person authorized to direct workers at a site to carry out activities required by the storm-water pollution prevention plan or to comply with other permit conditions.
- (31) *Original ground surface* means the existing ground surface before any grading, excavation, or filling.
- (32) *Owner or property owner* means any person having individual or joint or common title to property in any form defined by the laws of the State of Georgia as an estate or interest, whether legal or equitable and however acquired, in real property.
- (33) *Permanent vegetation* means planted trees, shrubs, grasses, perennial vines, a crop of perennial vegetation appropriate for the Atlanta region and planted at the appropriate time of year, or a

crop of annual vegetation and a seeding of perennial vegetation appropriate for the Atlanta region.

- (34) *Permit or Land-disturbing activity permit (or LDA permit)* means the authorization necessary to conduct a land-disturbing activity under the provisions of this article. Such authorization shall be deemed included in the building permit issued pursuant to Appendix A, § 103.1 of the City of Atlanta Land Development Code. If Appendix A is not applicable, such authorization may be provided by an approved plan and subject to any required fees, bonds, or NOIs.
- (35) *Person* means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, state agency, municipality or other political subdivision of this state, any interstate body or any other legal entity.
- (36) *Project* means the entire proposed development regardless of the size of the area of land to be disturbed.
- (37) *Properly Designed* means designed in accordance with the hydraulic design specifications or BMP design requirements contained in the Manual for Erosion and Sediment Control in Georgia (Green Book).
- (38) *Riparian buffer* means the area of land lying adjacent to a wetland or stream in which development is prohibited or limited as more particularly set out in Article VII Chapter 74 § 303 of the Atlanta City Code, or applicable state or federal law.
- (39) *Roadway drainage structure* means a device such as a bridge, culvert, or ditch, composed of a virtually non-erodible material such as concrete, steel, plastic, or other such material that conveys water under a roadway by intercepting the flow on one side of a traveled way consisting of one or more defined lanes, with or without shoulder areas, and carrying water to a release point on the other side.
- (40) *Sediment* means solid material, both organic and inorganic, that is in suspension, is being transported, or has been moved from its site of origin by air, water, ice, or gravity as a product of erosion.
- (41) *Sedimentation* means the process by which eroded material is transported and deposited by the action of water, wind, ice or gravity.
- (42) *Site* means the real property on which land-disturbing activities occur regardless of the size of the disturbed area.
- (43) *Stabilization or stabilize* means the process of establishing an enduring soil cover of vegetation by the installation of temporary or permanent structures for the purpose of reducing to a minimum the erosion process and the resultant transport of sediment by wind, water, ice or gravity.

- (44) *State General Permit* or National Pollutant Discharge Elimination System (NPDES) permit means the authorization for the discharge of storm water runoff from construction activities. This term shall mean the NPDES permit currently in effect or as may be amended or reissued in the future pursuant to the state's authority to implement the same through federal delegation under the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, *et. seq.*, and O.C.G.A. § 12-5-30(f).
- (45) *State waters* means any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells, and other bodies of surface or subsurface water, natural or artificial, lying within or forming a part of the boundaries of the state which are not entirely confined and retained completely upon the property of a single individual, partnership, or corporation.
- (46) *State Waters Buffer* means the area of land immediately adjacent to state waters or trout stream as more particularly set out in §74-43(c)(15) and 74-43(c)(16).
- (47) *Structure* means that which is built, placed, or constructed, as more particularly set out in Part 8, Chapter 2, Article B § 8-2083 of the City of Atlanta Land Development Code. The term "structure" includes impervious surfaces as defined by Article VII Chapter 74 § 74-302(15) of the Atlanta City Code, temporary buildings or appurtenances, and pipes or utility lines.
- (48) *Structural erosion and sedimentation control practices* means methods for the stabilization of erodible or sediment-producing areas by utilizing the mechanical properties of matter for the purpose of either changing the surface of the land or storing, regulating or disposing of runoff to prevent excessive sediment loss. Examples of structural erosion and sediment control practices are riprap, sediment basins, dikes, level spreaders, waterways or outlets, diversions, grade stabilization structures, sediment traps and land grading, etc. Such practices can be found in the Manual for Erosion and Sediment Control in Georgia.
- (49) *Trout streams* means all streams or portions of streams within the watershed as designated by the Game and Fish Division of the Georgia Department of Natural Resources under the provisions of the Georgia Water Quality Control Act, O.C.G.A. § 12-5-20 *et seq.* Streams designated as primary trout waters are defined as water supporting a self-sustaining population of rainbow, brown or brook trout. Streams designated as secondary trout waters are those in which there is no evidence of natural trout reproduction, but are capable of supporting trout throughout the year. First order trout waters are streams into which no other streams flow except springs.
- (50) *Vegetative erosion and sedimentation control measures* means measures for the stabilization of erodible or sediment-producing areas by covering the soil using one or more of the following measures found in the Manual for Erosion and Sediment Control in Georgia:
- a. Permanent seeding, sprigging or planting, producing long-term vegetative cover; or
 - b. Temporary seeding, producing short-term vegetative cover; or
 - c. Sodding, covering areas with a turf of perennial sod-forming grass.

- (51) *Watercourse* means any natural or artificial watercourse, stream, river, creek, channel, ditch, canal, conduit, culvert, drain, waterway, gully, ravine, or wash in which water flows either continuously or intermittently and which has a definite channel, bed and banks, and including any area adjacent thereto subject to inundation by reason of overflow or floodwater.
- (52) *Wetlands* means those areas, delineated in accordance with the U.S. Army Corps of Engineers Wetlands Delineation Manual, 1987 as amended, that under normal conditions contain hydric soils, hydrophytic vegetation, and hydrologic conditions reflecting temporary or permanent inundation or saturation by surface or ground water. Wetlands generally include swamps, marshes, bogs, and similar areas and typically support a prevalence of vegetation adapted for life in saturated soil conditions.

SECTION 4: That Atlanta City Code § 74-38 entitled "Applicability of article; exemptions" is hereby amended to read as follows:

Sec. 74-38. Applicability of article; exemptions.

This article shall apply to any land-disturbing activity undertaken by any person on any land except for the following:

- (1) Surface mining, as the same is defined in O.C.G.A. § 12-4-70, "Mineral Resources and Caves Act;"
- (2) Granite quarrying and land clearing for such quarrying;
- (3) Such minor land-disturbing activities as home gardens and individual home landscaping, repairs, maintenance work, fences, and other related activities which result in minor soil erosion;
- (4) The construction of single-family residences, when such construction disturbs less than one acre and is not a part of a larger common plan of development or sale with a planned disturbance of equal to or greater than one acre and not otherwise exempted under this paragraph; provided, however, that construction of any such residence shall conform to the minimum requirements as set forth in section 74-43 of this article. For single-family residence construction covered by the provisions of this paragraph, there shall be a buffer zone between the residence and any state waters classified as trout streams pursuant to Article 2 of Chapter 5 of the Georgia Water Quality Control Act. In any such buffer zone, no land-disturbing activity shall be constructed between the residence and the point where vegetation has been wrested by normal stream flow or wave action from the banks of the trout waters. For primary trout waters, the buffer zone shall be at least 50 horizontal feet, and no variance to a smaller buffer shall be granted. For secondary trout waters, the buffer zone shall be at least 50 horizontal feet, but the director may grant variances to no less than 25 feet. Regardless of whether a trout stream is primary or secondary, for first order trout waters, which are streams into which no other streams

flow except for springs, the buffer shall be at least 25 horizontal feet, and no variance to a smaller buffer shall be granted. The minimum requirements of section 74-43 of this article and the buffer zones provided by this section shall be enforced by the city;

- (5) Agricultural operations as defined in O.C.G.A. § 1-3-3, "definitions", to include raising, harvesting or storing of products of the field or orchard; feeding, breeding or managing livestock or poultry; producing or storing feed for use in the production of livestock, including but not limited to cattle, calves, swine, hogs, goats, sheep, and rabbits or for use in the production of poultry, including but not limited to chickens, hens and turkeys; producing plants, trees, fowl, or animals; the production of aqua culture, horticultural, dairy, livestock, poultry, eggs and apiarian products; farm buildings and farm ponds;
- (6) Forestry land management practices, including harvesting; provided, however, that when such exempt forestry practices cause or result in land-disturbing or other activities otherwise prohibited in a state waters buffer, as established in section 74-43(c)(15) and (16) of this article, no other land-disturbing activities, except for normal forest management practices, shall be allowed on the entire property upon which the forestry practices were conducted for a period of three years after completion of such forestry practices;
- (7) Any project carried out under the technical supervision of the Natural Resources Conservation Service of the United States Department of Agriculture;
- (8) Any project involving less than five thousand (5,000) square feet of disturbed area; provided, however, that this exemption shall not apply to any land-disturbing activity within a larger common plan of development or sale with a planned disturbance of equal to or greater than one acre or within 200 feet of the bank of any state waters, and for purposes of this paragraph, "state waters" excludes channels and drainage ways which have water in them only during and immediately after rainfall events and intermittent streams which do not have water in them year-round; provided, however, that any person responsible for a project which involves less than five thousand (5,000) square feet, which involves land-disturbing activity, and which is within 200 feet of any such excluded channel or drainage way, must prevent sediment from moving beyond the boundaries of the property on which such project is located and provided, further, that nothing contained herein shall prevent the city from regulating any such project which is not specifically exempted by subsections (1), (2), (3), (4), (5), (6), (7), (9), or (10) of this section;
- (9) Construction or maintenance projects, or both, undertaken or financed in whole or in part, or both, by the department of transportation, the Georgia Highway Authority, or the state tollway authority; or any road construction or maintenance project, or both, undertaken by any county or municipality; provided, however, that construction or maintenance projects of department of transportation or state tollway authority which disturb one or more contiguous acres of land shall be subject to provisions of O.C.G.A. § 12-7-7.1 except where the department of transportation, the Georgia Highway Authority, or the state road and tollway authority is a secondary permittee for a project located within a

larger common plan of development or sale under the state general permit, in which case a copy of a notice of intent under the state general permit shall be submitted to the city, and the city shall enforce compliance with the minimum requirements set forth in O.C.G.A. § 12-7-6 as if a LDA permit had been issued, and violations shall be subject to the same fines or penalties as violations by permit holders;

- (10) Any land-disturbing activities conducted by any electric membership corporation or municipal electrical system or any public utility under the regulatory jurisdiction of the public service commission, any utility under the regulatory jurisdiction of the Federal Energy Regulatory Commission, any cable television system as defined in O.C.G.A. § 36-18-1, or any agency or instrumentality of the United States engaged in the generation, transmission, or distribution of power; except where an electric membership corporation or municipal electrical system or any public utility under the regulatory jurisdiction of the public service commission, any utility under the regulatory jurisdiction of the Federal Energy Regulatory Commission, any cable television system as defined in O.C.G.A. § 36-18-1, or any agency or instrumentality of the United States engaged in the generation, transmission, or distribution of power is a secondary permittee for a project located within a larger common plan of development or sale under the state general permit, in which case the city shall enforce compliance with the minimum requirements set forth in O.C.G.A. § 12-7-6 as if an LDA permit had been issued, and violations shall be subject to the same fines or penalties as violations by permit holders; and

- (11) Any public water system reservoir.

SECTION 5: That Atlanta City Code § 74-39 entitled "Application and permit process" is hereby amended to read as follows:

Sec. 74-39. Application and permit process.

- (a) *General.* A permit is required for any land-disturbing activity in the City of Atlanta unless exempt in accordance with §74-38, above. The property owner, developer and designated planners and engineers shall review the general development plans and detailed plans of the city that affect the tract to be developed and the area surrounding it. They shall review the zoning ordinance, stormwater management ordinance, subdivision ordinance, flood damage prevention ordinance, this article, and other ordinances which regulate the development of land within the jurisdictional boundaries of the city and shall design the proposed development in compliance with these regulations.
- (b) *Application requirements.*
 - (1) No person required to apply for an LDA permit shall conduct any land-disturbing activity, requiring an approved erosion and sediment control plan within the jurisdictional boundaries of the city without first obtaining a LDA permit from the city to perform such activity;

- (2) The application for a land-disturbing activity permit shall be submitted to the bureau of buildings and must include the applicant's erosion and sedimentation control plan with supporting data, as necessary. Said plans shall include, as a minimum, the data specified in section 74-40 of this article. Soil erosion and sedimentation control plans shall conform to the provisions of subsection 74-43 of this article. All applications shall contain a certification stating that the plan preparer or the designee thereof visited the site prior to creation of the plan or that such a visit was not required in accordance with rules and regulations established by the board. The application shall include the owner's name, street address, mailing address if different from street address (a post office box alone shall not satisfy this requirement), and other contact information such as phone numbers and e-mail addresses.
- (3) Immediately upon approval of an application and plan for a LDA permit, the city shall refer the application and plan to the district for its review and approval or disapproval concerning the adequacy of the erosion and sedimentation control plan, if such review and approval or disapproval is required. The district shall approve or disapprove a plan within 35 days of receipt. Failure of a district to act within 35 days shall be considered an approval of the pending plan. The results of the district review shall be forwarded to the city. No LDA permit will be issued unless the plan has been approved by the district, and any variances required by subsection 74-43(c)(13), (15), and (16), and bonding, if required, as per subsection 74-39(b)(5) have been obtained. Such review will not be required if the city and the district have entered into an agreement which allows the city to conduct such review and approval of the plan without referring the application and plan to the district.
- (4) If an LDA permit applicant has had two or more violations of previous city issued permits, this article, section, or the Erosion and Sedimentation Act, as amended, within three years prior to the date of filing of the application under consideration, the city may deny the LDA permit application.
- (5) *Performance bonds required.* For land-disturbing activities on sites with a disturbed area of one acre or greater, or on which there is cut, fill, or a combination of both in an amount greater than 500 cubic yards, the applicant shall post a performance bond in accordance with the following requirements:
 - (i) The bond amount shall be \$3,000 minimum, and prorated at \$3,000 per acre for any amount or fraction greater than one acre;
 - (ii) The performance bond shall be issued by a bonding company licensed and registered in Georgia;
 - (iii) The performance bond shall ensure that all affected areas will be stabilized through structural measures, vegetative measures, or both to provide effective soil erosion and sediment control;

- (iv) The term of the bond shall extend from the beginning of the project until one year following its completion. The performance bond shall be written to the benefit of the City of Atlanta and shall obligate the bonding company to correct any violations of this Article for a period of one year following cessation of land-disturbing activities or final sign-off pursuant to § 74-43(f);
 - (v) Failure to maintain or renew the performance bond, should it expire prior to final sign-off, shall be a violation of this Article, and shall be a separate violation for each day of such failure, and shall be grounds for suspending or revoking the LDA permit;
 - (f) If the applicant does not comply with this article or with the conditions of the LDA permit after issuance, the city may call the bond in accordance with § 74-42(h).
- (c) *LDA permits.*
 - (1) LDA permits shall be issued or denied as soon as practicable but in any event not later than 45 days after receipt by the city of a completed application, providing variances and bonding are obtained, where necessary.
 - (2) No LDA permit shall be issued by the city unless the erosion and sedimentation control plan has been approved by the district and the city has affirmatively determined that the plan is in compliance with this article, any variances required by subsection 74-43(c)(13), (15), (16), or other ordinances are obtained, bonding requirements, if necessary as per subsection 74-39(b)(5) are met, and all ordinances and rules and regulations in effect within the jurisdictional boundaries of the city are met; provided, however, such approval by the district will not be required if the city and the district have entered into an agreement which allows the city to approve the plan without referring the application and plan to the district. If the LDA permit is denied, the reason for denial shall be furnished to the applicant.
 - (3) If the tract is to be developed in phases, then a separate LDA permit shall be required for each phase.
 - (4) The LDA permit may be suspended, revoked, or modified by the city, as to all or any portion of the land affected by the plan, upon finding that the permittee, owner, or a successor in title is not in compliance with the approved erosion and sedimentation control plan, or that the permittee, owner, or a successor in title is in violation of this article. A holder of an LDA permit or owner shall notify any successor in title as to all or any portion of the land affected by the approved plan of the conditions contained in the LDA permit.

- (5) No permit shall be issued unless the applicant provides a statement by the tax collector or tax commissioner of the county in which the property for which the permit is requested lies and by the official responsible for the collection for municipal taxes for the city, if applicable, certifying that all ad valorem taxes levied against the property and due and owing have been paid.
- (6) No permit shall be issued or permit modification or revision be approved for construction within a larger common plan of development or sale if there is a pending enforcement action pursuant § 74-42 or the State General Permit, except to allow corrective or remedial measures.
- (7) *Notice of Intent and Notice of Termination.* NOIs and NOTs required to be submitted to the EPD District Office under the State General Permit shall be submitted concurrently to the City of Atlanta.
- (8) A copy of the permit shall be posted on the site at all times as set out in Appendix A, Chapter 1 § 102.2(c) of the City of Atlanta Land Development Code.

SECTION 6: That Atlanta City Code § 74-40 entitled "Plan requirements" is hereby amended to read as follows:

Sec. 74-40. Plan requirements.

- (a) Plans must be prepared to meet the minimum requirements as contained in subsection 74-43 of this article. Conformance with the minimum requirements may be attained through the use of design criteria in the Manual for Erosion and Sediment Control in Georgia, or through the use of more stringent, alternate design criteria which conform to sound conservation and engineering practices. The Manual for Erosion and Sediment Control in Georgia is hereby incorporated by reference into this ordinance. The plan for the land-disturbing activity shall consider the interrelationship of the soil types, geological and hydrological characteristics, topography, watershed, vegetation, proposed permanent structures including roadways, constructed waterways, sediment control and stormwater management facilities, city ordinances, and state laws.
- (b) Data required for site plan.
 - (1) Narrative or notes, and other information: Notes or a narrative shall be written on the site plan, in the general notes section, or in the erosion and sediment control notes section of the plan.
 - (2) Description of existing land use at project site and description of proposed project.
 - (3) Name, street address, and phone number of the property owner.

- (4) Name and phone number of 24-hour local contact who is responsible for erosion and sedimentation controls.
 - (5) Total size of site, project, or phase under construction, and total size of disturbed area in both square feet and acres.
 - (6) Construction activity schedule showing the sequence of major activities involving land-disturbance to be completed in chronological order, including, but not limited to, anticipated starting and completion dates for the project, initial installation of BMPs, clearing and grubbing activities, grading, utility installation, and temporary and final stabilization in accordance with § 74-43(f). Include the following statement in bold letters: "The installation of erosion and sedimentation control measures and practices shall occur prior to or concurrent with land-disturbing activities."
 - (7) Stormwater and sedimentation management systems' storage capacity, hydrologic study, and calculations, including off-site drainage areas.
 - (8) Vegetative plan for all temporary and permanent vegetative measures, including species, planting dates, and seeding, fertilizer, lime, and mulching rates. The vegetative plan shall show applicable options for year-round seeding in accordance with Chapter 6 Section II, *Vegetative Measures*, of the Manual for Erosion and Sediment Control in Georgia.
 - (9) Detailed drawings for all structural erosion control practices. Detailed drawings shall either follow guidelines set forth in the Manual for Erosion and Sediment Control in Georgia, or shall adhere to more stringent, alternate design criteria which conform to sound conservation and engineering practices.
 - (10) In accordance with § 74-41(a), the following maintenance statement in bold letters: "Erosion and sedimentation control measures will be maintained at all times. If full implementation of the approved plan does not provide for effective erosion and sediment control, additional erosion and sediment control measures shall be implemented to control or treat the sediment source."
- (c) Maps, drawings, and supportive computations shall bear the signature/seal of a certified design professional. The certified plans shall contain:
- (1) Graphic scale and north point or arrow indicating magnetic north.
 - (2) Vicinity maps showing location of project or site, and existing streets and drainage paths within one mile of the project.
 - (3) Boundary line survey.
 - (4) Delineation of disturbed areas within project boundary.

- (5) Existing and planned contours, with an interval in accordance with the following:

TABLE INSET:

Map Scale	Contour Interval, ft.	Ground Slope
1 inch = 100 ft. or larger scale	0.5 or 1	Flat 0--2%
	1 or 2	Rolling 2--8%
	2, 5 or 10	Steep 8%

- (6) Adjacent areas and features including, but not limited to, streams, lakes, wetlands, and residential areas, which may be affected by the proposed land-disturbing activity.
- (7) Proposed structures or additions to existing structures and paved areas.
- (8) State waters buffers required by § 74-43(c)(15) and 74-43(c)(16), and the riparian buffers required by Article VII Chapter 74 §§ 303(a), 303(b), 303(c), and 303(d).
- (9) Where applicable, the 2,000 foot Chattahoochee River Corridor as required by O.C.G.A. § 12-5-440 *et. seq* and set out in Article VII Chapter 74 § 314(b), and the allowable limits of impervious surface and land-disturbing activities as specified in accordance with the certificate issued under O.C.G.A. § 12-5-445.
- (10) The specified horizontal state waters buffer along designated trout streams (the Chattahoochee River within the city) required by subsection 74-43(c)(16).
- (11) Locations of BMPs using coding symbols from the Manual for Erosion and Sediment Control in Georgia.
- (12) Detailed maintenance requirements for each BMP.
- (13) Information required by the applicable Erosion, Sedimentation and Pollution Control Plan Review Checklist, as may be amended, established by the Commission (currently available at <http://www.gaswcc.org>) for projects which disturb one acre or more.
- (d) *Revisions.* Revisions or amendments to an approved erosion and sedimentation control plan that may affect a BMP with a hydraulic component shall be certified by a design professional, and subsequently approved by the Department of Watershed Management.
- (e) A copy of the approved erosion and sedimentation control plan shall be kept at the site during all land-disturbing activities.

SECTION 7: That Atlanta City Code § 74-41 entitled "Inspection and enforcement" is hereby amended to read as follows:

Sec. 74-41. Inspection and enforcement.

- (a) The city will periodically inspect the sites of land-disturbing activities for which LDA permits have been issued to determine if the activities are being conducted in accordance with the plan and if the measures required in the plan are effective in controlling erosion and sedimentation. If implementation of the approved plan does not provide for effective erosion control, the owner or operator shall install additional erosion and sedimentation control measures to control or treat the sediment source. The city shall regulate primary, secondary, and tertiary permittees as such terms are defined in the state general permit. Primary permittees shall be responsible for installation and maintenance of best management practices where the primary permittee is conducting land-disturbing activities. Secondary permittees shall be responsible for installation and maintenance of best management practices where the secondary permittee is conducting land-disturbing activities. Tertiary permittees shall be responsible for installation and maintenance of BMPs where the tertiary permittee is conducting land-disturbing activities.
- (b) *Notice.* If, through inspection, it is deemed that a person engaged in land-disturbing activities has failed to comply with the approved plan, LDA permit conditions, or the provisions of this article, an official notice or stop- work order shall be served upon that person. The official notice or stop-work order shall set forth the measures necessary to achieve compliance and shall state the time within which such measures must be completed. If the person engaged in the land-disturbing activity fails to comply within the time specified in the notice, he or she shall be deemed in violation of this Article.
- (c) *Right of entry.* The city shall conduct such investigations as it may reasonably deem necessary to carry out duties as prescribed in this article, and for this purpose, to enter at reasonable time upon any property, public or private, for the purpose of investigation and inspecting the sites of land-disturbing activities. This includes the right to enter a property when the city has a reasonable basis to believe that a violation of this ordinance is occurring or has occurred and to enter when necessary for abatement of a public nuisance or correction of a violation of this ordinance.
- (d) No person shall refuse entry or access to any authorized representative or agent of the city, the commission, the district, or division who requests entry for the purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his or her official duties.
- (e) The districts or the commission or both may periodically review the actions of the city. The districts or the commission or both may provide technical assistance to the city for

the purpose of improving the effectiveness of the city's erosion and sedimentation control program. The districts or the commission may notify the division and request investigation by the division if any deficient or ineffective local program is found.

- (f) The division may periodically review the actions of the city. Such review may include, but shall not be limited to, review of the administration and enforcement of the city's ordinance and review of conformance with an agreement, if any, between the district and the city. If such review indicates that the city has not administered or enforced its ordinances or has not conducted the program in accordance with any agreement entered into pursuant to O.C.G.A. § 12-7-7(e), the division shall notify the city in writing. The city shall have ninety (90) days within which to take the necessary corrective action to retain certification as an issuing authority. If the city does not take necessary corrective action within ninety (90) days after notification by the division, the division may revoke the certification of the city as an issuing authority.

SECTION 8: That Atlanta City Code § 74-42 entitled "Stop work and penalties" is hereby amended to read as follows:

Sec. 74-42. Stop work, penalties, and fines.

- (a) *Failure to obtain a permit for land-disturbing activity.* No person shall conduct land-disturbing activity that requires an LDA permit in accordance with § 74-39 of this Article, and no person shall conduct land-disturbing activity that requires a building permit in accordance with Appendix A, § 103.1 of the City of Atlanta Land Development Code without first obtaining said permit, respectively. Conducting land-disturbing activity without a required LDA permit shall be a violation of this code. A person that conducts land-disturbing activity in violation of this subsection shall be subject to revocation of its business license, work permit, or other authorization for the conducting of business and associated activities within the jurisdictional boundaries of the city.
- (b) *Land-disturbing activity stop-work orders; effect.* When a land-disturbing activity stop-work order is issued by the city, such stop-work order shall be a final order of the city, shall be effective immediately, and shall apply to all land-disturbing activity on the site, except for necessary corrective action or mitigation, and shall be in effect until such corrective action or mitigation has occurred. Performing land-disturbing activities on a site while subject to a land-disturbing activity stop-work order shall be a violation of this article.
- (c) *Project-wide stop-work orders; effect.* When a project wide stop-work order is issued by the city, such stop-work order shall be a final order of the city, shall be effective immediately and shall apply to all activity on the site, including but not limited to land-disturbing activity, construction, architecture, landscape, electric, plumbing and any other work at the site, except for necessary corrective action or mitigation, and shall be in effect until such corrective action or mitigation has occurred. Performing activities on a site while subject to a project wide stop-work order shall be a violation of this article.

- (d) *Notice to comply for first violation of article.* Except as otherwise provided in this section, for the first violation of the provisions of this article, the city shall issue an official, written notice to the owner, operator, or violator. The owner, operator, or violator shall have three days to correct the violation. If the violation is not corrected within three days, the city shall issue a land-disturbing activity stop-work order. If the violation is not corrected within three days from the issuance of the land-disturbing activity stop-work order, the city shall issue a project wide stop-work order.
- (e) *Additional violations of article; when stop-work.* For a second and for each subsequent violation of the provisions of this article, the city may issue an immediate land-disturbing activity stop work order. If the violation is not corrected within three days from the issuance of the land-disturbing activity stop-work order, the city may issue a project wide stop-work order.
- (f) *Stop-work orders not requiring warning.* A stop-work order shall be issued immediately by the city for any of the following, which are violations of this code:
 - (1) Commencing any land-disturbing activity requiring a land-disturbing activity permit without first obtaining a permit pursuant to §74-42(a); or
 - (2) Commencing any land-disturbing activity requiring a land-disturbing activity permit without first conducting a pre-construction meeting with the city pursuant to section 74-43(e); or
 - (3) If the violation presents an imminent threat to public health or waters of the state pursuant to § 74-43(c)(18); or
 - (4) If significant amounts of sediment, as determined by the city, have been or are being discharged into state waters pursuant to § 74-43(b)(2); or
 - (5) Commencing any land-disturbing activity in either the state waters buffer or the riparian buffer that requires either a state buffer variance or an authorized encroachment in accordance with Article VII Chapter 74 § 306 without first obtaining the required variance or authorized encroachment, pursuant to §§ 74-43(c)(15), 74-43(c)(16), or 74-43(d); or
 - (6) Best management practices have not been properly designed, installed, and maintained pursuant to § 74-43(b)(1).
- (g) *Fines and illegal buffer encroachments.*
 - (1) Any person who violates any provisions of this article, or any LDA permit condition or limitation established pursuant to this article or who negligently or intentionally fails or refuses to comply with any final or emergency order of the city or director issued as provided in this ordinance shall be liable for a fine not to

exceed \$2,500.00 per day. For the purpose of enforcing the provisions of this article, notwithstanding any provisions in any City Charter to the contrary, the city's municipal courts have been authorized by the General Assembly to impose a fine not to exceed \$2,500.00 for each violation. Each day during which violation or failure or refusal to comply continues shall be a separate violation.

- (2) Any person who violates § 74-43(c)(15) or § 74-43(c)(16) by performing land-disturbing activities or placing fill or structures within a state waters buffer or a riparian buffer without a state buffer variance or an authorized encroachment in accordance with Article VII Chapter 74 § 306 shall, in addition to any fine or stop work order, remove such encroachment and temporarily stabilize any disturbed area in accordance with the Manual for Erosion and Sediment Control. From and after the effective date of this ordinance, the unauthorized placement of fill or structures within a state waters buffer or a riparian buffer shall constitute a nuisance per se and shall be unlawful. The Solicitor or City attorney is authorized to file such actions as may be necessary to remedy the unauthorized placement of fill or structures within a state waters buffer or riparian buffer, including a petition for a restraining order, injunction, abatement, or any other appropriate legal action or proceeding in a court of competent jurisdiction to prevent, restrain, or abate an unlawful use or activity.
- (3) *Buffer Restoration and Revegetation Plan Required.* Any person in violation of § 74-42(h)(2), above, shall submit a Buffer Restoration and Revegetation Plan to the city in accordance with the City of Atlanta Buffer Revegetation Guidelines, referenced in Article VII Chapter 74 §306(d)(3), and in accordance with the approved Buffer Restoration and Revegetation Plan, the violator shall restore the buffer with native riparian vegetation. Final sign-off of the land-disturbing activity in accordance with § 74-43(f) shall be contingent upon implementing the Buffer Restoration and Revegetation Plan.
- (4) Any fine imposed pursuant to subsections (1) or (2) of this section shall be in addition to any stop-work order issued by the city or the director under his or her authority.
- (h) *Bond forfeiture.* If after official notice, the owner or operator fails to bring the site into compliance with this Article, he or she shall be deemed in violation of this article and, in addition to other fines or penalties, shall be deemed to have forfeited the performance bond set out in § 74-39(b)(5). Upon notice by the city that the bond is forfeited, the bonding company shall bring the site into compliance in accordance with § 74-39(b)(5)(iv). Alternatively, the city may remediate and stabilize the site to bring it into compliance, and the bonding company shall be responsible for the associated costs up to the amount of the bond.
- (i) *Liens.* Any costs incurred by the city in accordance with § 74-42(h) that are not covered by the performance bond shall be assessed against the property on which the land-disturbing activity occurred and shall constitute a lien on the property if such costs are

not paid within 60 days of receipt of notice of such costs. Notice shall be deemed effective within five days of the city mailing or delivering by courier or express mail written notice addressed to the property owner(s) as ownership appears on the tax records of Fulton/DeKalb County.

- (j) *Compliance meetings.* In addition to any enforcement mechanism or fine imposed pursuant to § 74-42, the commissioner may invite the owner or operator to a compliance meeting to review the determination that a violation of this article has occurred, and the consequent remedial action(s) to be taken. If the owner or operator and the commissioner can agree to appropriate remedial and preventive measures, such measures and a reasonable compliance schedule shall be incorporated as a supplemental condition of the permit. If an agreement is not reached through this process, the commissioner may institute other enforcement actions in accordance with this ordinance to ensure compliance with the provisions of this article or other laws or regulations.
- (k) *Show cause hearing.* The commissioner may order an owner or operator that causes or contributes to violations of this article to appear before the commissioner and show cause why enforcement actions should not be taken. Notice shall be served on the owner or operator and shall specify the date, time, and location of the hearing, the reasons for this hearing, and proposed enforcement actions.
- (l) *Consent agreements.* The commissioner may enter into a consent order or establish an agreement with the owner or operator responsible for noncompliance. Such orders will include the specific action(s) to be taken by the owner or operator to correct the noncompliance within a time frame specified in the order. Failure of an owner or operator to abide by a consent agreement shall be grounds for further and additional enforcement.
- (m) *Assessment of damages.* When erosion or sedimentation from a land-disturbing activity causes damage or any other impairment to city facilities or property, the Commissioner shall assess the expenses incurred by the city to repair damage to the city facilities or property, and any other expenses or damages incurred by the city. The Commissioner shall file a claim with the owner, operator, or any other person causing said damages seeking reimbursement for any and all expenses or damages suffered by the city. If the claim is ignored or denied, the Commissioner shall notify the City Attorney to take such measures as shall be appropriate to recover for any expense or other damages suffered by the city.

SECTION 9: That Atlanta City Code § 74-43 entitled "Minimum requirements for erosion and sedimentation control using best management practices" is hereby amended to read as follows:

Sec. 74-43. Minimum requirements for erosion and sedimentation control using best management practices.

- (a) *General provisions.* Excessive soil erosion and resulting sedimentation can take place during land-disturbing activities. Therefore, plans for those land-disturbing activities which are not excluded by this article shall contain provisions for application of soil erosion and sedimentation control measures and practices. The provisions shall be incorporated into the erosion and sedimentation control plans. Soil erosion and sedimentation control measures and practices shall conform to the minimum requirements of subsection 74-43 of this article. The application of measures and practices shall apply to all features of the site, including street and utility installations, drainage facilities and other temporary and permanent improvements. Measures shall be installed to prevent or control erosion and sedimentation pollution during all stages of any land-disturbing activity.
- (b) *Minimum requirements/BMP's.*
 - (1) Best management practices (BMPs) consistent with, and no less stringent than, those practices contained in the Manual for Erosion and Sediment Control in Georgia shall be utilized in accordance with all land-disturbing activities to prevent and minimize erosion and resultant sedimentation. BMPs shall be utilized for the duration of all land-disturbing activities, and shall be properly designed, installed, and maintained in accordance with the Manual for Erosion and Sediment Control in Georgia. Maintenance of all BMPs, whether temporary or permanent, shall be, at all times, the responsibility of the property owner or operator. Proper design, installation, and maintenance of BMPs shall constitute a complete defense to any action by the commissioner or to any other allegation of noncompliance with paragraph (2) of this subsection or any substantially similar terms contained in a state general permit for the discharge of stormwater issued pursuant to O.C.G.A. § 12-5-30(f), the "Georgia Water Quality Control Act"..
 - (2) A discharge of stormwater runoff from disturbed areas where best management practices have not been properly designed, installed, and maintained shall constitute a separate violation of any land-disturbing activity permit issued by the city or of any state general permit issued by the Division pursuant to O.C.G.A. § 12-5-30(f), the "Georgia Water Quality Control Act", for each day on which such discharge results in the turbidity of receiving waters being increased by more than 25 nephelometric turbidity units (NTUs) for waters supporting warm water fisheries or by more than ten nephelometric turbidity units for waters classified as trout waters. The turbidity of the receiving waters shall be measured in accordance with guidelines to be issued by the director. This paragraph shall not apply to any land-disturbing activity associated with the construction of single family homes which are not part of a larger common plan of development or sale unless the planned disturbance for such construction is equal to or greater than five acres.
 - (3) Failure to properly design, install, or maintain best management practices shall constitute a violation of this Article for each day on which such failure occurs

- (4) The director may require, in accordance with regulations adopted by the board, reasonable and prudent monitoring of the turbidity level of receiving waters into which discharges from land-disturbing activities occur. Compliance with any state requirements are additional requirements of any LDA permit issued by the city pursuant to this article.
- (c) The city adopts by reference the rules and regulations, ordinances, and resolutions adopted by the board pursuant to the Erosion and Sedimentation Act of 1975, O.C.G.A. § 12-7-1, *et seq.*, as amended, for the purpose of governing land-disturbing activities, which require, as a minimum, protections at least as stringent as the State General Permit, and best management practices, including sound conservation and engineering practices to prevent and minimize erosion and resultant sedimentation, which are consistent with, and no less stringent than, those practices contained in the Manual for Erosion and Sediment Control in Georgia, as well as the following:
 - (1) BMPs and tree protection fences shall be installed along site boundaries prior to stripping of vegetation, grading, and other land-disturbing activities to minimize erosion and prevent sedimentation.
 - (2) Cut or fill shall be minimized;
 - (3) Development plans must conform to topography and soil type so as to create the lowest practical erosion potential;
 - (4) Whenever feasible, natural vegetation shall be retained, protected and supplemented;
 - (5) The disturbed area and the duration of soil exposure to erosive elements shall be kept to a practicable minimum;
 - (6) Disturbed soil shall be stabilized as quickly as practicable; provided, however, the following shall apply:
 - (a) Disturbed areas shall be stabilized using temporary vegetation and mulch within fourteen (14) days of land-disturbing activity, and permanent vegetation shall be used within thirty (30) days of land-disturbing activity;
 - (b) Disturbed areas related to utility construction shall be stabilized by the close of each business day; and
 - (c) Slopes greater than 2.5:1 (two and one-half (2.5) feet horizontal to one (1) foot vertical) shall be permanently stabilized as soon as practicable using erosion control matting and blankets pursuant to the Manual for Erosion and Sediment Control in Georgia, in combination with permanent vegetation.
 - (7) Temporary vegetation or mulching shall be employed to protect exposed critical areas during development;

- (8) Structural erosion control practices shall be installed as soon as practicable;
- (9) To the extent necessary, sediment in run-off water must be trapped by the use of debris basins, sediment basins, silt traps, or similar measures until final stabilization in accordance with § 74-43(f) has occurred. BMPs for sediment storage in accordance with this section shall be installed prior to and for the duration of all land-disturbing activities;
- (10) Adequate provisions must be provided to minimize damage from surface water to the cut face of excavations or the sloping of fills;
- (11) Cut or fill shall not endanger adjoining property; any change in grade shall conform to the following requirements:
 - (a) No fill shall exceed a 2:1 (two (2) feet horizontal and one (1) foot vertical) slope; and
 - (b) No cut shall exceed a 2:1 (two (2) feet horizontal and one (1) foot vertical) slope.
- (12) Fills may not encroach upon natural watercourses or constructed channels in a manner so as to adversely affect other property owners;
- (13) Grading equipment must cross flowing streams by means of temporary bridges or culverts unless this requirement is waived by the city;
- (14) Erosion and sedimentation control plans shall include provisions for treatment or control of any source of sediments and adequate sedimentation control facilities to retain sediments on-site or preclude sedimentation of adjacent waters beyond the levels specified in subsection 74-43(b)(2) of this article;
- (15) State waters buffer required by O.C.G.A. § 12-7-6: Except as provided in paragraph (16) of this subsection, there is established a 25-foot buffer along the banks of all state waters, as measured horizontally from the point where vegetation has been wrested by normal stream flow or wave action, except where the director determines to allow a variance that is at least as protective of natural resources and the environment, where otherwise allowed by the director pursuant to O.C.G.A. § 12-2-8, or where a drainage structure or a roadway drainage structure must be constructed, provided that adequate erosion control measures are incorporated in the project plans and specifications, and are implemented; or along any ephemeral stream. As used in this provision, the term 'ephemeral stream' means a stream that under normal circumstances has water flowing only during and for a short duration after precipitation events; that has the channel located above the ground-water table year round; for which ground water is not a source of water; and for which runoff from precipitation is the primary source of

water flow. Unless exempted as along an ephemeral stream, the buffers of at least 25 feet established pursuant to part 6 of Article 5, Chapter 5 of Title 12, the "Georgia Water Quality Control Act", shall remain in force unless a variance is granted by the director as provided in this paragraph. The following requirements shall apply to any such buffer:

- a. No person shall conduct land-disturbing activities within a state waters buffer, and a buffer shall remain in its natural, undisturbed state of vegetation until all land-disturbing activities on the construction-site are completed. Once the final stabilization of the site is achieved in accordance with § 74-43(f), a state waters buffer may be thinned or trimmed by hand of vegetation as long as a protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed; provided, however, that any person constructing a single-family residence, when such residence is constructed by or under contract with the owner for his or her own occupancy, may thin or trim by hand vegetation in a state waters buffer at any time as long as protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed; and
 - b. The state waters buffer shall not apply to the following land-disturbing activities, provided that they occur at an angle, as measured from the point of crossing, within 25 degrees of perpendicular to the stream; cause a width of disturbance of not more than 50 feet within the buffer; and adequate erosion control measures are incorporated into the project plans and specifications and are implemented:
 1. Stream crossings for water lines; or
 2. Stream crossings for sewer lines;
- (16) State Waters trout stream buffer required by O.C.G.A. § 12-7-6: There is established a 50-foot buffer as measured horizontally from the point where vegetation has been wrested by normal stream flow or wave action, along the banks of any state waters classified as "trout streams" pursuant to Article 2 of Chapter 5 of Title 12, the "Georgia Water Quality Control Act", except where a roadway drainage structure must be constructed; provided, however, that small springs and streams classified as trout streams which discharge an average annual flow of 25 gallons per minute or less shall have a 25-foot buffer or they may be piped, at the discretion of the landowner, pursuant to the terms of a rule providing for a general variance promulgated by the board, so long as any such pipe stops short of the downstream landowner's property and the landowner complies with the buffer requirement for any adjacent trout streams. The director may grant a variance from such buffer to allow land-disturbing activity, provided that adequate erosion control measures are incorporated in the project plans and

specifications and are implemented. The following requirements shall apply to such buffer:

- a. No land-disturbing activities shall be conducted within a state waters trout stream buffer and said buffer shall remain in its natural, undisturbed, state of vegetation until all land-disturbing activities on the construction-site are completed. Once the final stabilization of the site is achieved, a state waters trout stream buffer may be thinned or trimmed by hand of vegetation as long as a protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed: Provided, however, that any person constructing a single-family residence, when such residence is constructed by or under contract with the owner for his or her own occupancy, may thin or trim by hand vegetation in a state waters trout stream buffer at any time as long as protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed;
 - b. The state waters trout stream buffer shall not apply to the following land-disturbing activities, provided that they occur at an angle, as measured from the point of crossing, within 25 degrees of perpendicular to the stream; cause a width of disturbance of not more than 50 feet within the buffer; and adequate erosion control measures are incorporated into the project plans and specifications and are implemented:
 1. Stream crossings for water lines; or
 2. Stream crossings for sewer lines;
- (17) The project shall be posted with a sign approved by the commissioner and visible both to the street and site workers to notify the public of the erosion and sedimentation control ordinance and city's soil erosion hotline telephone number;
 - (18) Land-disturbing activities shall not pose an imminent threat to public health or waters of the state. Imminent threats to public health or waters of the state include, but are not limited to, tracking sediment onto a public or private street, encroaching into a state waters buffer, or sedimentation of the municipal separate storm sewer system;
 - (19) Topsoil, if present, shall be stockpiled and reused on the site to the maximum extent practicable;
 - (20) Sedimentation of a watercourse in connection with a land-disturbing activity shall be remediated in accordance with a remedial plan prepared by a design professional and approved by the Department. From and after the effective date of this ordinance, sedimentation of a watercourse in connection with a land-disturbing activity shall constitute a nuisance per se and shall be unlawful. The

Solicitor or City attorney is authorized to file such actions as may be necessary to remedy the sedimentation of a watercourse in connection with a land-disturbing activity, including a petition for a restraining order, injunction, abatement, or any other appropriate legal action or proceeding in a court of competent jurisdiction to prevent, restrain, or abate an unlawful use or activity.

- (d) No person shall conduct land-disturbing activity within a riparian buffer without first obtaining an authorized encroachment in accordance with Article VII Chapter 74 of the Atlanta City Code; and
- (e) No land-disturbing activity shall commence prior to a pre-construction meeting between the city and the person or persons responsible for the installation and maintenance of the erosion and sedimentation control measures. Such meeting shall be held on the site where the land-disturbing activity is to occur.
- (f) *Final stabilization and final sign-off.* Following the completion or cessation of land-disturbing activities at a site, all unpaved areas and areas not covered by permanent structures shall be uniformly covered (one-hundred (100) percent of the soil within the disturbed area) with permanent vegetation with a density of seventy (70) percent or greater, or equivalent permanent stabilization measures, including, but not limited to, rip rap, gabions, permanent mulches, or geotextiles. A final sign-off by the Department of Watershed Management shall be required for all projects involving land-disturbing activities, and said sign-off shall occur prior to the issuance of a Certificate of Occupancy or the recording of any final plat.

SECTION 10: That Atlanta City Code § 74-44 entitled "Validity and liability" is hereby amended to read as follows:

Sec. 74-44. Validity and liability.

- (a) *Validity.* If any section, paragraph, clause, phrase, or provision of this article shall be adjudged invalid or held unconstitutional, such decisions shall not affect the remaining portions of this article.
- (b) *Liability.*
 - (1) Neither the approval of a plan under the provisions of this article, nor the compliance with provisions of this article shall relieve any person from the responsibility for damage to any person or property otherwise imposed by law nor impose any liability upon the city or district for damage to any person or property.
 - (2) The fact that a land-disturbing activity for which an LDA permit has been issued results in injury to the property of another shall neither constitute proof of nor create a presumption of a violation of the standards provided for in this article or the terms of the LDA permit.

- (3) No provision of this article shall permit any persons to violate the Georgia Erosion and Sedimentation Act of 1975, the Georgia Water Quality Control Act or the rules and regulations promulgated and approved there under or pollute any waters of the state as defined thereby.

SECTION 11: That Atlanta City Code § 74-45 entitled "Administrative appeal and judicial review" is hereby amended to read as follows:

Sec. 74-45. Administrative appeal and judicial review.

- (a) *Administrative remedy.* In the event of any suspension, revocation or modification of any LDA permit, the permit holder shall receive written notice of such action and shall be given the opportunity to show cause why such suspension, revocation or modification should be withdrawn by the city. The city acting by and through its commissioner of watershed management shall review the LDA permit application, the reasons submitted by the permit holder for determining such permit holder not be in violation, and shall issue a decision in writing, if such decision to suspend, revoke or modify the LDA permit is affirmed, setting forth the reasons for doing so.
- (b) *Judicial review.* Any person aggrieved by such decision, after exhausting his or her administrative remedies, shall have the right to appeal to the Superior Court of the county wherein which such land-disturbing activity occurred or is proposed to occur, for review of such written decision.
- (c) *Review process.* The review process for new LDA permits, as well as that for suspension, modification, and revocation of LDA permits described in this section, will be conducted by the city, unless the district has not reached an agreement with the city which would authorize the city to conduct such review and approval of the plan without referring the application and plan to the district. In the absence of such authorization, review will be conducted by the district.

SECTION 12: That Atlanta City Code § 74-46 entitled "Education and certification" is hereby amended to read as follows:

Sec. 74-46. Education and certification.

- (a) Persons involved in land development design, review, permitting, construction, monitoring, or inspection, or in any land-disturbing activities shall meet the education and training certification requirements, dependent on their level of involvement with the process, as developed by the commission in consultation with the division and the stakeholder advisory board created pursuant to O.C.G.A. § 12-7-20.

- (b) For each site on which land-disturbing activity occurs, each entity or person acting as either a primary, secondary, or tertiary permittee, as defined in the state general permit, shall have, as a minimum, one person who is in responsible charge of erosion and sedimentation control activities on behalf of said entity or person and meets the applicable education or training certification requirements developed by the Commission present on site whenever land-disturbing activities are conducted on that site. A project site shall herein be defined as any land-disturbance site or multiple sites within a larger common plan of development or sale permitted by an owner or operator for compliance with the state general permit.
- (c) Persons or entities involved in projects not requiring a state general permit but otherwise requiring certified personnel on site may contract with certified persons to meet the requirements of this ordinance.
- (d) If a state general permittee who has operational control of land-disturbing activities for a site has met the certification requirements of paragraph (1) of subsection (b) of O.C.G.A. 12-7-19, then any person or entity involved in land-disturbing activity at that site and operating in a subcontractor capacity for such permittee shall meet those educational requirements specified in paragraph (4) of subsection (b) of O.C.G.A. 12-7-19 and shall not be required to meet any educational requirements that exceed those specified in said paragraph.

SECTION 13: That Atlanta City Code § 74-47 entitled "LDA permit fees" is hereby amended to read as follows:

Sec. 74-47. LDA permit fees.

- (a) *Land-disturbing activity fee.* In addition to any fee levied in this Code of Ordinances, there is assessed a fee of forty dollars (\$40.00) per disturbed acre payable to the City of Atlanta upon application to perform land-disturbing activities. This fee is adopted as required by the State of Georgia pursuant to O.C.G.A. § 12-5-23(5)(a), and the Rules and Regulations for Water Quality Control of the Georgia Department of Natural Resources. This fee shall be collected as a separate and distinct charge for the purposes of administering the implementation of the state general permit, which has been delegated to the city as a local issuing authority pursuant to O.C.G.A. § 12-7-1 *et seq.*
- (b) *Re-inspection fee.* The Commissioner shall charge a fee of fifty dollars (\$50.00) for the re-inspection of a project if a re-inspection is requested prior to the end of a compliance period and the site is found to remain out of compliance upon that inspection. Such fees shall be allocated to cover administrative, field-inspection, and transportation costs, and said re-inspection fee shall be paid prior to the final sign-off in accordance with § 74-43(f).

SECTION 14: That this ordinance shall be effective upon approval by the Mayor or upon its becoming law without the Mayor's approval.

SECTION 15. That all existing ordinances or parts of ordinances in conflict with this ordinance shall be waived to the extent of the conflict.

Part II: Legislative White Paper: (This portion of the Legislative Request Form will be shared with City Council members and staff)

A. To be completed by Legislative Counsel:

Committee of Purview: City Utilities

Caption: AN ORDINANCE TO AMEND ARTICLE II OF CHAPTER 74 ENTITLED "SOIL EROSION AND SEDIMENTATION CONTROL" (§ 74-36 *et seq.*) TO COMPLY WITH THE REQUIREMENTS OF THE GEORGIA EROSION AND SEDIMENTATION ACT OF 1975 (O.C.G.A. § 12-7-1 *et seq.*); TO INCORPORATE THE REQUIREMENTS OF THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM; TO CLARIFY THE REGULATION OF EPHEMERAL STREAMS; AND FOR OTHER PURPOSES.

Council Meeting Date: May 17, 2010

Requesting Dept.: Watershed Management

B. To be completed by the department:

1. Please provide a summary of the purpose of this legislation (Justification Statement).

Example: The purpose of this legislation is to anticipate funds from a local assistance grant to purchase child safety seats.

The purpose of this ordinance is to amend Article II of Chapter 74 entitled "Soil Erosion and Sedimentation Control" (§ 74-36 *et seq.*) to comply with the requirements of the Georgia Erosion and Sedimentation Act of 1975 (O.C.G.A. § 12-7-1 *et seq.*); to incorporate the requirements of the National Pollutant Discharge Elimination System; to clarify the regulation of ephemeral streams; and for other purposes.

2. Please provide background information regarding this legislation.

Example: The task force of homelessness conducted a study regarding homelessness, its impact and consequences on the City. This resolution reflects the Mayor's desire to open a twenty-four hour center that will respond to the needs of the homelessness in Atlanta.

The City of Atlanta is required pursuant to O.C.G.A. § 12-7-8(a)(2) to amend its Soil Erosion and Sedimentation Control ordinance within 12 months of any amendment to the Georgia Erosion and Sedimentation Act of 1975 in order to maintain its status as a Local Issuing Authority. Senate Bill 155 was passed in the 2009 Regular Session of the Georgia General Assembly, and it amended the Georgia Erosion and Sedimentation Act of 1975 to clarify regulations pertaining to ephemeral streams; therefore, the City is required to amend its ordinance to clarify ephemeral stream regulations. The Department of Watershed Management is using this opportunity to clarify several sections of the ordinance including the

performance bonding requirements, revegetation of illegal land disturbance within a stream buffer, and the definitions.

3. If Applicable/Known:

- (a) Contract Type (e.g. Professional Services, Construction Agreement, etc): N/A
- (b) Source Selection: N/A
- (c) Bids/Proposals Due: N/A
- (d) Invitations Issued: N/A
- (e) Number of Bids: N/A
- (f) Proposals Received: N/A
- (g) Bidders/Proponents: N/A
- (h) Term of Contract: N/A

4. Fund Account Center (Ex. Name and number):

Fund:, Account:, Center:, Function Activity:

5. Source of Funds: *Example: Local Assistance Grant*

6. Fiscal Impact: NA

Example: This legislation will result in a reduction in the amount of _____ to Fund Account Center Number _____.

7. Method of Cost Recovery:

Examples:

- a. Revenues generated from the permits required under this legislation will be used to fund the personnel needed to carry out the permitting process.*
- b. Money obtained from a local assistance grant will be used to cover the costs of this Summer Food Program.*

This Legislative Request Form Was Prepared By: Kenna Laslavic

TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE

ATTN: Chief of Staff

Dept.'s Legislative Liaison: _____ Maisha L. Wood _____

Contact Number: _____ (404) 330-6887 _____

Originating Department: _____ Department of Watershed Management _____

Committee(s) of Purview: _____ City Utilities _____

Chief of Staff Deadline: _____ April 27, 2010 _____

Anticipated Committee Meeting Date(s): _____ May 11, 2010 _____

Anticipated Full Council Date: _____ May 17, 2010 _____

Legislative Counsel's Signature: _____ *Man* _____

Commissioner Signature: _____ *Robert J. Hunter* ²⁰ _____

Chief Procurement Officer Signature: _____ n/a _____

CAPTION

AN ORDINANCE TO AMEND ARTICLE II OF CHAPTER 74 ENTITLED "SOIL EROSION AND SEDIMENTATION CONTROL" (§ 74-36 et seq.) TO COMPLY WITH THE REQUIREMENTS OF THE GEORGIA EROSION AND SEDIMENTATION ACT OF 1975 (O.C.G.A. § 12-7-1 et seq.); TO INCORPORATE THE REQUIREMENTS OF THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM; TO CLARIFY THE REGULATION OF EPHEMERAL STREAMS; AND FOR OTHER PURPOSES.

FINANCIAL IMPACT (if any): n/a

Mayor's Staff Only

Received by CPO: _____ Received by LC from CPO: _____
(date) _____ 4/27/10 (date) _____

Received by Mayor's Office: _____ Reviewed by: _____
(date) _____ (date) _____

Submitted to Council: _____ (date) _____

**AN ORDINANCE BY
CITY UTILITIES COMMITTEE**

AN ORDINANCE TO AUTHORIZE THE REVISION IN PERMIT FEES FOR ENCROACHMENTS PURSUANT TO THE PROVISIONS OF CHAPTER 138, SECTION 138-20 AND APPENDIX B OF THE CODE OF ORDINANCES, CITY OF ATLANTA, GEORGIA; TO ADD AN ANNUAL INSPECTION FEE TO ALL ENCROACHMENT AGREEMENTS; AND FOR OTHER PURPOSES.

WHEREAS, the Department of Public Works ("DPW") has reviewed the fee structure for the issuance of permits for Encroachment Agreements; and

WHEREAS, DPW has determined that the present amounts charged for the issuance of said permits as set out in Appendix B: Fees, Section entitled "Streets, Sidewalks and Other Public Places, Subsection entitled "Encroachments, Construction and Excavations" do not reflect the actual cost to DPW for the issuance of said permits; and

WHEREAS, the issuance of such permits requires application review by the Departments of Public Works, Planning and Community Development, and Law; and

WHEREAS, initial and annual field inspections must also be conducted by DPW; and

WHEREAS, the current fees associated with the issuance of said permits is an application fee of \$500 for pipes, wires, conduits or similar facilities, and \$750.00 for all other types of encroachments; and .

WHEREAS, the present permit fee does not reflect the cost to the City of application processing and permit issuance.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY ORDAINS, as follows:

Section 1: That Section 138-20(a) of the City of Atlanta Code of Ordinances is amended, as set out below in bold and strikeout text to revise said section as follows:

- (a) When performing construction activities or the erection of a temporary or permanent encroachment, all such persons shall obtain prior approval, including all necessary permits and/or agreements, from the department of public works, and pay a **permit fee and annual inspection** fee for the issuance of said permit or agreement as set forth in Appendix B of this Code. The commissioner of public works shall require the person conducting activities pursuant to the permit and within the right-of-way to provide each abutting property owner or occupant with reasonable and timely notification of any impending construction work that would unreasonably interfere with either egress or ingress onto said owner's or occupant's property.

Section 138-20(a) as revised will then read as follows:

- (a) When performing construction activities or the erection of a temporary or permanent encroachment, all such persons shall obtain prior approval, including all necessary permits and/or agreements, from the department of public works, and pay a permit fee and annual inspection fee for the issuance of said permit or agreement as set forth in Appendix B of this Code. The commissioner of public works shall require the person conducting activities pursuant to the permit and within the right-of-way to provide each abutting property owner or occupant with reasonable and timely notification of any impending construction work that would unreasonably interfere with either egress or ingress onto said owner's or occupant's property.

Section 2 : That the Section entitled “Encroachments, Construction and Excavations” of Appendix B: Fees of the City of Atlanta Code of Ordinances is amended, as set out below in bold and strikeout text to revise said section as follows:

Vehicle, pedestrian or utility bridges: ~~\$750.00~~ **\$1,300.00**

Vehicle, pedestrian or utility tunnels: ~~\$750.00~~ **\$1,300.00**

Pipes, wires, conduits or similar facilities: ~~\$500.00~~ **\$1,300.00**

Basements, vaults, elevator shafts, stairs, stairwells, ventilation shafts, gratings or similar facilities: ~~\$750.00~~ **\$1,300.00**

Canopies, ledges, bay windows, balconies, decorative lighting, flagpoles, gargoyles, architectural embellishments, area walks or similar facilities: ~~\$500.00~~ **\$1,300.00**

Any building, parking garage, structure, or part thereof, including footings, foundations, tie-backs, supports, walls, eaves, or projections: ~~\$750.00~~ **\$1,300.00**

Yearly inspection fee: \$100

Appendix B: Fees, Section Entitled “Encroachments, Construction and Excavations” as revised will then read as follows:

Vehicle, pedestrian or utility bridges: \$1,300.00

Vehicle, pedestrian or utility tunnels: \$1,300.00

Pipes, wires, conduits or similar facilities: \$1,300.00

Basements, vaults, elevator shafts, stairs, stairwells, ventilation shafts, gratings or similar facilities: \$1,300.00

Canopies, ledges, bay windows, balconies, decorative lighting, flagpoles, gargoyles, architectural embellishments, area walks or similar facilities: \$1,300.00

Any building, parking garage, structure, or part thereof, including footings, foundations, tie-backs, supports, walls, eaves, or projections: \$1,300.00

Yearly inspection fee: \$100

Section 3: That Appendix B: Fees, shall be revised to reflect the imposition of fees in accordance with Section 2 above.

Section 4: Said fees shall become effective immediately upon the passage of this Ordinance.

Section 5: That the modified encroachment fees in Section 2 of this Ordinance shall be deposited into: 1001.000002.3511717.

Section 6: That all existing ordinances or parts of ordinances in conflict with this ordinance shall be waived for the purposes of this Ordinance only. and only to the extent of the conflict.

**AN ORDINANCE BY
CITY UTILITIES COMMITTEE**

AN ORDINANCE TO AUTHORIZE THE REVISION IN ANNUAL FEES FOR RECYCLING PURSUANT TO THE PROVISIONS OF CHAPTER 130, SECTION 130-82 AND APPENDIX B OF THE CODE OF ORDINANCES, CITY OF ATLANTA, GEORGIA; AND FOR OTHER PURPOSES.

WHEREAS, the Department of Public Works ("Department") has reviewed the fee structure for the assessment of recycling fees within the City of Atlanta ("City"); and

WHEREAS, the Department has determined that the present amount charged for the provision of recycling services as set out at Section 130-82 of the City of Atlanta Code of Ordinances does not reflect the actual cost to the Department for the recycling service provided; and

WHEREAS, the Department has incurred additional fees to do increased fuel charges, mileage, and the additional staff needed to provide recycling services to constituents; and

WHEREAS, the current fee associated with recycling services is an annual fee of \$30.00; and

WHEREAS, the current fees of \$30.00 per single-family and multi-family residence does not reflect the actual recycling costs of the city.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY ORDAINS, as follows:

Section 1: That Section 130-82(a) of the City of Atlanta Code of Ordinances is amended, as set out below in bold and strikeout text, to revise said section as follows:

(a) A fee of ~~\$30.00~~ **\$88.00** per year is established for the provision of recycling services for each single-family residence and for each unit of duplex, triplex and quadruplex residences.

Section 130-82(a), as revised will then read as follows:

(a) A fee of \$88.00 per year is established for the provision of recycling services for each single-family residence and for each unit of duplex, triplex and quadruplex residences.

Section 2: That Appendix B: Fees, shall be revised to reflect the imposition of fees in accordance with Section 1 above.

Section 3: Said fees shall become effective immediately upon the passage of this Ordinance.

Section 4: That the modified recycling fees in Section 1 of this Ordinance shall be deposited in FDOA: 5401 (Solid Waster Revenue Fund) 000002 (Revenue Default) 3441104 (Solid Waste- Fulco, CY) 3441108 (Solid Waste- Dekalb Co., CY).

Section 5: That all existing ordinances or parts of ordinances in conflict with this ordinance shall be waived for the purposes of this Ordinance only, and only to the extent of the conflict.

**A RESOLUTION
BY CITY UTILITIES COMMITTEE**

10-*R*-0937

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO RENEWAL AGREEMENT NO. 2 WITH ROCKDALE PIPELINE, INC./INTEGRAL MUNICIPAL SERVICES, INC., JOINT VENTURE FOR FC-3007000044, ANNUAL CONTRACT FOR PIPE LAYING, ON BEHALF OF THE DEPARTMENT OF WATERSHED MANAGEMENT FOR TIME-ONLY; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta ("City") did advertise for FC-3007000044, Annual Contract for Pipe Laying on behalf of the Department of Watershed Management; and

WHEREAS, the Commissioner of the Department of Watershed Management ("DWM") has identified the need for pipe laying services for the City for Atlanta Water Distribution systems; and

WHEREAS, the City did enter into FC-3007000044, Annual Contract for Pipe Laying on behalf of with Rockdale Pipeline, Inc./Integral Municipal Services, Inc., Joint Venture ("Rockdale Pipeline/IMS") pursuant to Resolution 08R0158; and

WHEREAS, the City did enter into Amendment Agreement No. 1 to include the Department of Aviation as a user, in an amount not to exceed \$3,000,000.00 pursuant to Resolution 08R2025; and

WHEREAS, the City did enter into Renewal Agreement No. 1 with a the term of July 28, 2010 to July 27, 2011 pursuant to Resolution 09R0669; and

WHEREAS, the City did enter into Amendment Agreement No. 2 to add FY 2010 funding in an amount not to exceed \$13,454,190.62 pursuant to 09R1945; and

WHEREAS, the City did enter into Amendment Agreement No. 3 pursuant to administrative change order; and

WHEREAS, the Commissioner of the Department of Watershed Management and the Chief Procurement Officer have recommended that the City enter Renewal Agreement No. 2 for FC-3007000044, Annual Contract for Pipe Laying with Rockdale Pipeline, Inc./Integral Municipal Services, Inc., Joint Venture ("Rockdale Pipeline/IMS") for time-only.

THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY RESOLVES, that the Mayor is authorized to enter into Renewal Agreement No. 2 with Rockdale Pipeline/IMS for FC-3007000044. Annual Contract for Pipe Laying, on behalf of the Department of Watershed Management for time-only.

BE IT FURTHER RESOLVED, that the term of Renewal Agreement No. 2 will be from July 28, 2010 to July 27, 2011.

BE IT FURTHER RESOLVED, that the Chief Procurement Officer is directed to prepare an appropriate Agreement for execution by the Mayor.

F-1

BE IT FINALLY RESOLVED, that the Agreement will not become binding on the City and the City will incur no obligation or liability under it until it has been executed by the Mayor, attested to by the Municipal Clerk, approved as to form by the City Attorney; and delivered to the Rockdale Pipeline/IMS.

**LEGISLATIVE SUMMARY
RENEWAL AGREEMENT NO. 2**

FC-3007000044, Annual Contract for Pipe Laying Services

TO: CITY UTILITIES COMMITTEE

CAPTION

Committee Meeting Date:	May 11-12, 2010						
Council Meeting Date:	May 17, 2010						
Legislation Title:	Annual Contract for Pipe Laying Services						
Requesting Dept.:	Department of Watershed Management						
Contract Type:	Construction Services						
Advertisement:	AJC on November 11, 2007 and November 18, 2007 City of Atlanta's website on November 12, 2007						
Bids/Proposals Due:	December 28, 2007						
Invitations Mailed:	One Hundred Fifteen (115)						
Bids/Proposals Received:	Three (3) Bidders: <table><tbody><tr><td>Rockdale Pipeline, Inc./Integral Municipal Services, JV</td><td>\$40,373,096.77*</td></tr><tr><td>Garney Companies, Inc./Roberts Trucking, Inc.</td><td>\$47,097,450.00</td></tr><tr><td>Kemi Construction/MST, JV</td><td>\$55,611,990.00</td></tr></tbody></table>	Rockdale Pipeline, Inc./Integral Municipal Services, JV	\$40,373,096.77*	Garney Companies, Inc./Roberts Trucking, Inc.	\$47,097,450.00	Kemi Construction/MST, JV	\$55,611,990.00
Rockdale Pipeline, Inc./Integral Municipal Services, JV	\$40,373,096.77*						
Garney Companies, Inc./Roberts Trucking, Inc.	\$47,097,450.00						
Kemi Construction/MST, JV	\$55,611,990.00						
Contractor:	Rockdale Pipeline/IMS, JV						
Estimated Value:	Time Only						

**Denotes the Lowest Most Responsive and Responsible Bidder.*

Scope Summary:

This Renewal Agreement No. 2 is to provide pipe laying services on an "on-demand" basis. Work includes but is not limited to: disinfection and testing of water mains of various sizes; installation of valves and fire hydrants; and, removal and replacement of asphalt paving, sidewalks, curbs and driveways.

Background:

Original contract was executed on July 28, 2008 to July 27, 2009.

Renewal Agreement No. 1 execution date: July 28, 2009

Amendment Agreement No. 1 execution date: October 30, 2008

Amendment Agreement No. 2 execution date: March 18, 2010

Amendment Agreement No. 3 execution date: March 30, 2010

Amendment Agreement No. 4 execution date: March 30, 2010

Evaluation Team:

Representatives from the Department of Watershed Management and the Office of Contract Compliance

Term of Contract:

One (1) year with two (2) one (1) year renewal options

Fund Account Centers:

Prepared By:

Cynthia Lunn, Contracting Officer

Contact Number:

(404) 330-6556



CITY OF ATLANTA


Shirley Franklin
Mayor

SUITE 1700
55 TRINITY AVENUE, SW
ATLANTA, GA 30303
(404) 330-6010 Fax: (404) 658-7359
Internet Home Page: www.atlantaga.gov

OFFICE OF CONTRACT COMPLIANCE
Hubert Owens
Director
h Owens@atlantaga.gov

MEMORANDUM

TO: Adam L. Smith, Chief Procurement Officer
Department of Procurement

FROM: Hubert Owens, Director 
Mayor's Office of Contract Compliance

RE: Bid Recommendation for FC 3007000044, Annual Contract for Pipe Laying Services

DATE: December 31, 2007

The Office of Contract Compliance has reviewed the three bids for minority and female business enterprise participation. All three bidders have been deemed responsive by the Office of Contract Compliance. For your information, they have committed to utilize AABEs, FBEs and HBEs as indicated below:

Rockdale Pipeline, Inc./Integral Municipal Services Corporation, a JV

Watershed Solutions, LLC	FBE 6%
Integral Municipal Services Corporation	AABE 28%
Participation Total	34%

Garney Companies, Inc./Roberts Hauling & Pipeline, a JV

Roberts Hauling & Pipeline	AABE 27%
Lori's Transportation & Excavation	FBE 7%
Aldridge Services	AABE 1%
Participation Total	35%

Kemi Construction Co./MST, a JV

Multi Works	AABE 5%
Atlanta Paving & Concrete Construction Co.	HBE 10%
MST Company	FBE 10%
Participation Total	25%

If you have questions, please contact me at (404) 330-6010 or Bruce T. Bell at (404) 330-6009.

cc: File
Lynn Portee, DOP

Part II: Legislative White Paper: (This portion of the Legislative Request Form will be shared with City Council members and staff)

A. To be completed by Legislative Counsel:

Committee of Purview: City Utilities

Caption: A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO RENEWAL AGREEMENT NO. 2 WITH ROCKDALE PIPELINE, INC./INTEGRAL MUNICIPAL SERVICES, INC., JOINT VENTURE FOR FC-3007000044, ANNUAL CONTRACT FOR PIPE LAYING, ON BEHALF OF THE DEPARTMENT OF WATERSHED MANAGEMENT FOR TIME-ONLY; AND FOR OTHER PURPOSES.

Council Meeting Date: May 17, 2010

Requesting Dept: Watershed Management

B. To be completed by the department:

1. Please provide a summary of the purpose of this legislation (Justification Statement).

Example: The purpose of this legislation is to anticipate funds from a local assistance grant to purchase child safety seats.

The purpose legislation is to seek authorization for Renewal No. 2 under FC-3007000044, Annual Contract for Pipe Laying Services with Annual Contract for Pipe Laying Services with Rockdale Pipeline, Inc./Integral Municipal Services, Inc., JV for time only.

2. Please provide background information regarding this legislation.

Example: The task force of homelessness conducted a study regarding homelessness, its impact and consequences on the City. This resolution reflects the Mayor's desire to open a twenty-four hour center that will respond to the needs of the homelessness in Atlanta.

3. If Applicable/Known:

- (a) **Contract Type (e.g. Professional Services, Construction Agreement, etc):** SERVICES
- (b) **Source Selection:** Competitive Bid
- (c) **Bids/Proposals Due:**
- (d) **Invitations Issued:**

(e) Number of Bids:

(f) Proposals Received:

(g) Bidders/Proponents:

(h) Term of Contract:

4. Fund Account Center (*Ex. Name and number*):

Fund: _____ Account: _____ Center: _____

5. Source of Funds: *Example: Local Assistance Grant*

6. Fiscal Impact:

Example: This legislation will result in a reduction in the amount of _____ to Fund Account Center Number _____.

7. Method of Cost Recovery:

Examples:

- a. Revenues generated from the permits required under this legislation will be used to fund the personnel needed to carry out the permitting process.*
- b. Money obtained from a local assistance grant will be used to cover the costs of this Summer Food Program.*

This Legislative Request Form Was Prepared By: Willie Canidate, Contracting Officer Sr., ext. 6335



KASIM REED
MAYOR

CITY OF ATLANTA
55 TRINITY AVENUE, SW, SUITE 5400, SOUTH BLDG.
ATLANTA, GEORGIA 30303-0324
OFFICE (404) 330-6081
FAX (404) 658-7194

DEPARTMENT OF
WATERSHED MANAGEMENT
ROBERT J. HUNTER
Commissioner

March 17, 2010

TO: Adam L. Smith, Chief Procurement Officer
Department of Procurement

FROM: Robert J. Hunter, Commissioner
Department of Watershed Management

A handwritten signature in black ink, reading "Robert J. Hunter" with a stylized flourish at the end.

RE: REQUEST TO RENEW
FC-3007000044, Annual Contract for Pipe Laying Services, For Time Only
Renewal #2

Contractor: Rockdale Pipeline, Inc./Integral Municipal Services, Inc., JV

The above referenced contract will expire on July 27, 2010. We are requesting that the contract be renewed for an additional one (1) year period **FOR TIME ONLY**, no additional funding is required. A legislative request for cycle 8, May 17, 2010, is attached for summary preparation.

All contract terms, conditions, and stipulations of the original contract shall remain the same.
Thank you for your assistance in this matter.

ATTACHMENT

RJH/SCP/wc

c: Sheila Pierce, Deputy Commissioner, DWM
David St. Pierre, Deputy Commissioner, DWM
Keith Brooks, Contract Administrator, Sr. DOP
Mano Smith, Contracting Officer, DOP
Willie Canidate, Contracting Officer, Sr. DWM
Cynthia Lum, Contracting Officer DOP
Maisha Land-Wood, Legislative Liaison, DWM
Benjamin Kuku, Director, DWM
Karla Brown, Accounting Manager, DWM
File

TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE

ATTN: Chief of Staff

Dept.'s Legislative Liaison: _____ Maisha L. Wood _____

Contact Number: _____ (404) 330-6887 _____

Originating Department: _____ Department of Watershed Management _____
Committee(s) of Purview: _____ City Utilities _____

Chief of Staff Deadline: _____ May 11, 2010 _____

Anticipated Committee Meeting Date(s): _____ June 1, 2010 _____

Anticipated Full Council Date: _____ June 7, 2010 _____

Legislative Counsel's Signature: _____

Commissioner Signature: _____ Robert J. Hunter, Sr. _____

Chief Procurement Officer Signature: _____

CAPTION

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO RENEWAL AGREEMENT NO. 2 WITH ROCKDALE PIPELINE, INC./INTEGRAL MUNICIPAL SERVICES, INC., JOINT VENTURE FOR FC-3007000044, ANNUAL CONTRACT FOR PIPE LAYING, ON BEHALF OF THE DEPARTMENT OF WATERSHED MANAGEMENT FOR TIME-ONLY; AND FOR OTHER PURPOSES.

FINANCIAL IMPACT (if any): n/a

Mayor's Staff Only

Received by CPO: _____ Received by LC from CPO: _____
(date) (date)

Received by Mayor's Office: _____ Reviewed by: _____
(date) (date)

Submitted to Council: _____ (date)

**A RESOLUTION
BY CITY UTILITIES COMMITTEE**

10-R-0938

A RESOLUTION AUTHORIZING THE MAYOR OR DESIGNEE TO ENCUMBER PHASE TWO (2) FUNDING IN THE AMOUNT OF FORTY-FOUR MILLION SIX HUNDRED SEVENTY-THREE THOUSAND NINE HUNDRED SEVENTY DOLLARS AND EIGHTY CENTS (\$44,673,970.80) FOR THE AGREEMENT WITH GSC ATLANTA, INC. FOR FC-4747 SOUTH RIVER TUNNEL AND PUMPING STATION ON BEHALF OF THE DEPARTMENT OF WATERSHED MANAGEMENT; ALL CONTRACTED WORK WILL BE CHARGED TO AND PAID FROM FUND, DEPARTMENT ORGANIZATION AND ACCOUNT NUMBERS 5066 (2009A WATER/WASTEWATER BOND) 170215 (DWM WASTEWATER SEWER REPAIR) 5414002 (FACILITIES OTHER THAN BLDGS/INFRASTRUCTURE - CIP) 4333000 (NEW SEWER SERVICES) AND PROJECT TASK AWARD EXPENDITURE AND ORGANIZATION NUMBER 17110345 (SOUTH RIVER RELIEF TUNNEL & PS) 103 (TASK) 506621876 (2009A WATER & WASTEWATER BOND) 5414002 (FAC NOT BLDG CIP) COA; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta ("City") entered into an agreement for FC-4747 South River Tunnel and Pumping Station ("Project") with GSC Atlanta, Inc.; and

WHEREAS, the Project is required by the City's First Amended Consent Decree with the Georgia Environmental Protection Division, U. S. Environmental Protection Agency and the Upper Chattahoochee Riverkeeper; and

WHEREAS, the City Council adopted 08-R-1860, which authorized the contract and provided for phased funding of the Project, with a total contract amount not to exceed One Hundred Eleven Million, Six Hundred Eighty-Four Thousand, Nine Hundred Twenty-Seven Dollars and No Cents (\$111,684,927.00); and

WHEREAS, the Department of Watershed Management did appropriate funds for Phase One (1) of the Project in an amount not to exceed Forty-Four Million, Six Hundred Seventy-Three Thousand, Nine Hundred Seventy Dollars and Eighty Cents (\$44,673,970.80) as adopted by City Council in 08-R-1860; and

WHEREAS, sufficient funds are available for the 2010 calendar year and the cash flow projections for the Phase Two (2) funding require Forty-Four Million, Six Hundred Seventy-Three Thousand, Nine Hundred Seventy Dollars and Eighty Cents (\$44,673,970.80).

THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY RESOLVES, that the Mayor or designee is authorized to encumber Phase Two (2) funding for the agreement with GSC Atlanta, Inc. for FC-4747 South River Tunnel and Pumping Station for the 2010 calendar year of the agreement in an amount not to exceed

F-2

Forty-Four Million, Six Hundred Seventy-Three Thousand, Nine Hundred Seventy Dollars and Eighty Cents (\$44,673,970.80).

BE IT FURTHER RESOLVED, that the City has adhered to the terms and conditions of the Phase Two (2) requirements for this agreement.

BE IT FINALLY RESOLVED, that all contracted work will be charged to and paid from Fund, Department Organization and Account Numbers 5066 (2009A Water/Wastewater Bond) 170215 (DWM Wastewater Sewer Repair) 5414002 (Facilities Other Than Bldgs/Infrastructure - CIP) 4333000 (New Sewer Services) and Project Task Award Expenditure and Organization Number 17110345 (South River Relief Tunnel & PS) 103 (Task) 506621876 (2009A Water & Wastewater Bond) 5414002 (Fac Not Bldg CIP) COA.

Part II: Legislative White Paper: (This portion of the Legislative Request Form will be shared with City Council members and staff)

A. To be completed by Legislative Counsel:

Committee of Purview: City Utilities

Caption: A RESOLUTION AUTHORIZING THE MAYOR OR DESIGNEE TO ENCUMBER PHASE TWO (2) FUNDING IN THE AMOUNT OF FORTY-FOUR MILLION SIX HUNDRED SEVENTY-THREE THOUSAND NINE HUNDRED SEVENTY DOLLARS AND EIGHTY CENTS (\$44,673,970.80) FOR THE AGREEMENT WITH GSC ATLANTA, INC. FOR FC-4747 SOUTH RIVER TUNNEL AND PUMPING STATION ON BEHALF OF THE DEPARTMENT OF WATERSHED MANAGEMENT; ALL CONTRACTED WORK WILL BE CHARGED TO AND PAID FROM FUND, DEPARTMENT ORGANIZATION AND ACCOUNT NUMBERS 5066 (2009A WATER/WASTEWATER BOND) 170215 (DWM WASTEWATER SEWER REPAIR) 5414002 (FACILITIES OTHER THAN BLDGS/INFRASTRUCTURE - CIP) 4333000 (NEW SEWER SERVICES) AND PROJECT TASK AWARD EXPENDITURE AND ORGANIZATION NUMBER 17110345.103.506621876.5414002.COA; AND FOR OTHER PURPOSES.

Council Meeting Date: June 7, 2010

Requesting Dept.: Watershed Management

B. To be completed by the department:

1. Please provide a summary of the purpose of this legislation (Justification Statement).

Example: *The purpose of this legislation is to anticipate funds from a local assistance grant to purchase child safety seats.*

To provide funding for the 2nd phase of a three (3) phase funded project with GSC Atlanta Inc., for FC-4747 South River Tunnel and Pumping Station in an amount not to exceed \$44,673,970.80.

2. Please provide background information regarding this legislation.

Example: *The task force of homelessness conducted a study regarding homelessness, its impact and consequences on the City. This resolution reflects the Mayor's desire to open a twenty-four hour center that will respond to the needs of the homelessness in Atlanta.*

FC-4747 South River Tunnel and Pumping Station is a project required under the terms of the First Amended Consent Decree to eliminate sanitary Sewer Overflows in the South River Sewer Basin.

3. If Applicable/Known:

- (a) **Contract Type (e.g. Professional Services, Construction Agreement, etc):** Professional Services
- (b) **Source Selection:**
- (c) **Bids/Proposals Due:**
- (d) **Invitations Issued:**
- (e) **Number of Bids:**
- (f) **Proposals Received:**
- (g) **Bidders/Proponents:**
- (h) **Term of Contract:** Substantial Completion 966 days, Full Completion 1066 days

4. Fund Account Center (Ex. Name and number): \$44,673,970.80

FDOA: 5066 (2009A WATER/WASTEWATER BOND), 170215 (DWM WASTEWATER SEWER REPAIR), 5414002 (FACILITIES OTHER THAN BLDGS/INFRASTRUCTURE - CIP), 4333000 (NEW SEWER SERVICES), 110345. 21876

PTAEO: 17110345.103.506621876.5414002.COA

Fund: _____ **Account:** _____ **Center:** _____

5. Source of Funds: Example: Local Assistance Grant

7. **Fiscal Impact:** FDOA: 5066 (2009A WATER/WASTEWATER BOND), 170215 (DWM WASTEWATER SEWER REPAIR), 5414002 (FACILITIES OTHER THAN BLDGS/INFRASTRUCTURE - CIP), 4333000 (NEW SEWER SERVICES), 110345. 21876

8. **PTAEO:** 17110345.103.506621876.5414002.COA

9.

Example: This legislation will result in a reduction in the amount of _____ to Fund Account Center Number _____.

7. Method of Cost Recovery: Revenue Fund

Examples:

- a. Revenues generated from the permits required under this legislation will be used to fund the personnel needed to carry out the permitting process.***
- b. Money obtained from a local assistance grant will be used to cover the costs of this Summer Food Program.***

This Legislative Request Form Was Prepared By: Lawrence Hall

**LEGISLATIVE SUMMARY
FC-4747, SOUTH RIVER TUNNEL AND PUMPING STATION, PHASE 2
FUNDING**

TO: CITY UTILITIES COMMITTEE

CAPTION

A RESOLUTION AUTHORIZING THE MAYOR OR DESIGNEE TO ENCUMBER PHASE TWO (2) FUNDING IN THE AMOUNT OF FORTY-FOUR MILLION SIX HUNDRED SEVENTY-THREE THOUSAND NINE HUNDRED SEVENTY DOLLARS AND EIGHTY CENTS (\$44,673,970.80) FOR THE AGREEMENT WITH GSC ATLANTA, INC. FOR FC-4747 SOUTH RIVER TUNNEL AND PUMPING STATION ON BEHALF OF THE DEPARTMENT OF WATERSHED MANAGEMENT; ALL CONTRACTED WORK WILL BE CHARGED TO AND PAID FROM FUND, DEPARTMENT ORGANIZATION AND ACCOUNT NUMBERS 5066 (2009A WATER/WASTEWATER BOND) 170215 (DWM WASTEWATER SEWER REPAIR) 5414002 (FACILITIES OTHER THAN BLDGS/INFRASTRUCTURE - CIP) 4333000 (NEW SEWER SERVICES) AND PROJECT TASK AWARD EXPENDITURE AND ORGANIZATION NUMBER 17110345.103.506621876.5414002.COA; AND FOR OTHER PURPOSES.

Committee Meeting Date:	June 1, 2010
Council Meeting Date:	June 7, 2010
Legislation Title:	FC-4747, SOUTH RIVER TUNNEL AND PUMPING STATION, PHASE 2 FUNDING
Requesting Dept.:	Watershed Management
Contract Type:	BID
Advertisement:	Web: 08/24/2008
Bids/Proposals Due:	October 13, 2008
Invitations Mailed:	20
Bids/Proposals Received:	2
Bidders:	Obayashi/Kenny, a JV; and (\$122,836,011.00) GSC Atlanta, Inc. (\$111,684,927.00)
Contractor:	GSC Atlanta, Inc.
Estimated Value:	Total Value: \$111, 684,927.00 (Funded in 3 phases) Phase 1: \$44,673,970.80

Phase 2: \$44,673,970.80

Scope Summary:

The scope of work provides for the construction of the South River Tunnel and Pumping Station. The scope of work requires approximately 9,100 LF of tunnel boring machine (TBM) excavated; 14 ft. finished diameter deep rock tunnel; 1,100 LF of drill and blast excavated connecting tunnel; reinforced and non-reinforced concrete lining for portions of the tunnel; 2 flow intake and drop shaft structures and 2 construction shaft gravity sewers; and 45 million gallon per day (MGD) submersible type pumping station.

Background:

Agreement executed on 01/15/2009.

Evaluation Team:

Representatives from the Department of Watershed Management and Office of Contract Compliance.

Term of Contract:

Contractor shall commence the Work within ten (10) calendar days after receipt of Notice to Proceed and shall substantially complete the Work within nine hundred sixty six (966) calendar days from issuance of the Notice to Proceed and fully complete the Work within one thousand sixty six (1066) calendar days of issuance of the Notice to Proceed, unless the City otherwise approves a Change to the Agreement Time.

Fund Account Centers:

5066 (2009A Water/Wastewater Bond) 170215 (DWM Wastewater Sewer Repair) 5414002 (Facilities Other Than Bldgs/Infrastructure - CIP) 4333000 (New Sewer Services) and Project Task Award Expenditure and Organization Number 17110345.103.506621876.5414002.COA.

Prepared By:

Mano Smith, Contracting Officer

Contact Number:

(404) 330-6351



KASIM REED
MAYOR

CITY OF ATLANTA
55 TRINITY AVENUE, SW, SUITE 5400, SOUTH BLDG.
ATLANTA, GEORGIA 30303-0324
OFFICE (404) 330-6081
FAX (404) 658-7194

DEPARTMENT OF
WATERSHED MANAGEMENT
ROBERT J. HUNTER
Commissioner

May 5, 2010

TO: Adam L. Smith, Chief Procurement Officer
Department of Procurement

FROM: Robert J. Hunter, Commissioner
Department of Watershed Management

SUBJECT: Legislative Request for FC-4747-08 South River Tunnel and Pumping Station (2nd Phase Funding)

The Department of Watershed Management is requesting the assistance of the Department of Procurement in the preparation of appropriate legislative summary for **(Cycle 9 (June 7, 2010))** for the above referenced contract GSC Atlanta Inc. in an amount not to exceed \$44,673,970.80.

FDOA: 5066 (2009A WATER/WASTEWATER BOND), 170215 (DWM WASTEWATER SEWER REPAIR), 5414002 (FACILITIES OTHER THAN BLDGS/INFRASTRUCTURE - CIP), 4333000 (NEW SEWER SERVICES), 110345. 21876

PTAEO: 17110345.103.506621876.5414002.COA

If you have any questions please contact Lawrence Hall, Departmental Contracting Officer, at (404) 330-6151.

Thank you for your assistance in this matter.

cc: Shelia Pierce, Deputy Commissioner, DWM
Chris Hebbard, Deputy Commissioner, BOE
Keith Brooks, Contractor Administrator, DOP
Mano Smith, Contracting Officer, DOP
Lawrence Hall, Departmental Contracting Officer, DWM
Maisha Land, Legislative Liaison, DWM
Theresa Stewart, Legislative Counsel, DOL



SHIRLEY FRANKLIN
MAYOR

CITY OF ATLANTA
55 TRINITY AVENUE, SUITE 5400, SOUTH BLDG
ATLANTA, GA 30335-0310
OFFICE (404) 330-6081 FAX: (404) 658-7194

DEPARTMENT OF WATERSHED
MANAGEMENT
ROBERT J. HUNTER
COMMISSIONER

October 14, 2008

MEMORANDUM

TO: Adam L. Smith, Chief Procurement Officer
Department of Procurement

FROM: Robert J. Hunter, Commissioner
Department of Watershed Management

PROJECT: FC-4747-08, South River Tunnel and Pump Station
REF: Recommendation/Award

Bids were received on October 13, 2008 from the following contractors for FC-4747-08, South River Tunnel and Pump Station:

<u>CONTRACTOR</u>	<u>AMOUNT</u>
GSC Atlanta, Inc.	\$111,684,927.00
Obayashi/Kenny, JV	\$122,836,011.00

Our recommendation for award is to GSC Atlanta, Inc. in an amount not to exceed \$111,684,927.00.

If you have any questions, or if further assistance is required, please contact Willie Canidate, Contracting Officer Sr. at 404.330.6335.

Thank you for your assistance in this matter.

Attachment

RH: SP: wc

c Sheila Pierce, DWM
George Barnes, DWM
Sammy Goodson, DWM
Willie Canidate, DWM
Cathy Martin, DOP
Mano Smith, DOP

10 OCT 16 AM 9:05
CITY OF ATLANTA
DEPT. OF PROCUREMENT



CITY OF ATLANTA

Shirley Franklin
Mayor

SUITE 1700
55 TRINITY AVENUE, SW
ATLANTA, GA 30303
(404) 330-6010 Fax: (404) 658-7359
Internet Home Page: www.atlantaga.gov

OFFICE OF CONTRACT COMPLIANCE
Hubert Owens
Director
h Owens@atlantaga.gov

MEMORANDUM

TO: Adam L. Smith, Chief Procurement Officer
Department of Procurement

FROM: Hubert Owens, Director *HO*
Mayor's Office of Contract Compliance

RE: Bid Recommendation for FC 4747, South River Tunnel and Pumping Station

DATE: October 13, 2008

The Office of Contract Compliance has reviewed the two bids for minority and female business enterprise participation. Both bidders have been deemed responsive by the Office of Contract Compliance. For your information, they have committed to utilize AABEs, HBE, ABE and FBEs as indicated below:

Obayashi/Kenny a JV

Metals & Materials Engineers (MM&E)	AABE 20%
Hardeman Electric	AABE 3%
Metro Petroleum	AABE 1%
Contour Engineering	ABE 0.4%
T.B. Transport	AABE 2%
Anatek, Inc.	FBE 3%
Aldridge Services, Inc.	AABE 0.1%
F.M. Shelton	FBE 4%
Participation Total	33.5%

GSC Atlanta, Inc.

Annasteel & Supply Co.	FBE 3%
Anatek, Inc.	HBE 12%
Lions Group	AABE 5%
Siskey Trucking	FBE 1%
Civil Works, Inc.	AABE 2%
American Shoring, Inc.	FBE 1%
Bryson Constructors	AABE 1%
Participation Total	25%

If you have questions, please contact me at (404) 330-6010 or Bruce T. Bell at (404) 330-6009.

cc: File
Mano A. Smith, DOP

TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE

ATTN: Chief of Staff

Dept.'s Legislative Liaison: _____ Maisha L. Wood _____

Contact Number: _____ (404) 330-6887 _____

Originating Department: _____ Department of Watershed Management _____

Committee(s) of Purview: _____ City Utilities _____

Chief of Staff Deadline: _____ May 21, 2010 _____

Anticipated Committee Meeting Date(s): _____ June 1, 2010 _____

Anticipated Full Council Date: _____ June 7, 2010 _____

Legislative Counsel's Signature: Theresa Hunt

Commissioner Signature: Robert G. Hunter

Chief Procurement Officer Signature: Hydan Shinn

CAPTION

A RESOLUTION AUTHORIZING THE MAYOR OR DESIGNEE TO ENCUMBER PHASE TWO (2) FUNDING IN THE AMOUNT OF FORTY-FOUR MILLION SIX HUNDRED SEVENTY-THREE THOUSAND NINE HUNDRED SEVENTY DOLLARS AND EIGHTY CENTS (\$44,673,970.80) FOR THE AGREEMENT WITH GSC ATLANTA, INC. FOR FC-4747 SOUTH RIVER TUNNEL AND PUMPING STATION ON BEHALF OF THE DEPARTMENT OF WATERSHED MANAGEMENT; ALL CONTRACTED WORK WILL BE CHARGED TO AND PAID FROM FUND, DEPARTMENT ORGANIZATION AND ACCOUNT NUMBERS 5066 (2009A WATER/WASTEWATER BOND) 170215 (DWM WASTEWATER SEWER REPAIR) 5414002 (FACILITIES OTHER THAN BLDGS/INFRASTRUCTURE - CIP) 4333000 (NEW SEWER SERVICES) AND PROJECT TASK AWARD EXPENDITURE AND ORGANIZATION NUMBER 17110345.103.506621876.5414002.COA; AND FOR OTHER PURPOSES.

FINANCIAL IMPACT (if any): \$44,673,970.80

Mayor's Staff Only

Received by CPO: _____ Received by LC from CPO: _____
(date) (date)

Received by Mayor's Office: IT Perry 5/11/10 Reviewed by: [Signature]
(date) (date)

Submitted to Council: _____ (date)

A RESOLUTION BY

10-R-0943

CITY UTILITIES COMMITTEE

AUTHORIZING THE MAYOR TO ENTER INTO AN COST SHARE AGREEMENT WITH THE UNITED STATES ARMY CORPS OF ENGINEERS ("USACE") TO FUND A WATERSHED RIVER INTAKE AND EROSION CONTROL IMPROVEMENT PROJECT FOR DEFOORS ISLAND IN AN AMOUNT NOT TO EXCEED TWO MILLION DOLLARS AND NO CENTS (\$2,000,000.00); ALL CONTRACTED WORK WILL BE CHARGED TO AND PAID FROM FUND DEPARTMENT ACCOUNT AND ORGANIZATION NUMBER 5052 (WATER & WASTEWATER RENEWAL & EXTENSION FUND) 170203 (DWM WASTEWATER TREATMENT) 5414002 (FACILITIES OTHER THAN BLDGS INFRASTRUCTURE - CIP) 4310000 (SANITARY ADMINISTRATION) AND PROJECT TASK AWARD EXPENDITURE AND ORGANIZATION NUMBER 17100392 (GENERAL IMPROVEMENTS C) 102 (TASK) 505221391 (DWM R N E 9999) 5414002 (FAC' NOT BLDG CIP) COA; AND FOR OTHER PURPOSES.

WHEREAS, Defoors Island lies between two (2) existing weirs ("river sills") that direct water to the City of Atlanta's ("City") river intake structure and ensure a consistent pool elevation of water is available to provide adequate flow to the Raw Water Pump Station which then pumps water to the City's treatment plants; and

WHEREAS, the installation of the structures and the rehabilitation of the weir system to improve the City's Chattahoochee Raw Water Intake and stabilize the eastern bank of the Defoors Island will provide a firm capacity of Two Hundred Twenty-Two (222) million gallons per day (MGD) with the largest main out of service during low flow condition; and

WHEREAS, failure to address the deficiencies in Defoors Island and the weirs will eventually result in the inability of the City of Atlanta to withdraw the permitted capacity of water from the Chattahoochee River, especially during drought conditions; and

WHEREAS, the Project is required by the City's Consent Decree with the Georgia Environmental Protection Division, U.S. Environmental Protection Agency and the Upper Chattahoochee Riverkeeper; and

WHEREAS, the Department of Watershed Management desires to enter into an cost sharing agreement with the United States Army Corps of Engineers ("USACE") to fund a Watershed River Intake And Erosion Control Improvement Project for Defoors Island as stated in the Cost Share Agreement ("Exhibit A"); and

WHEREAS, this project is authorized under Section 219 of the Water Resources and Development Act of 1992, with the USACE contributing Seventy-Five Percent (75%) of the project costs, approximately One Million Five Hundred Thousand Dollars and No Cents (\$1,500,000.00) and requiring the City to contribute Twenty Five Percent (25%) of

F-3

the project costs, approximately Five Hundred Thousand Dollars and No Cents (\$500,000.00); and

WHEREAS, the Commissioner of the Department of Watershed Management recommends the execution of an agreement with the United States Army Corps of Engineers to fund a Watershed River Intake And Erosion Control Improvement Project for Defoors Island in an amount not to exceed Two Million Dollars and No Cents (\$2,000,000.00).

WHEREAS, the Project is required by the City's Consent Decree with the Georgia Environmental Protection Division, U.S. Environmental Protection Agency and the Upper Chattahoochee Riverkeeper.

THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY RESOLVES, that the Mayor is authorized to execute a Cost Share Agreement in substantial form as the agreement attached hereto as Exhibit "A" with the United States Army Corps of Engineers ("USACE") to fund a Watershed River Intake And Erosion Control Improvement Project for Defoors Island in an amount not to exceed Two Million Dollars and No Cents (\$2,000,000.00).

BE IT FURTHER RESOLVED, that the USACE will contribute Seventy-Five Percent (75%) of the project costs, approximately One Million Five Hundred Thousand Dollars and No Cents (\$1,500,000.00) and the City's contribution will be Twenty Five Percent (25%) of the project costs, approximately Five Hundred Thousand Dollars and No Cents (\$500,000.00).

BE IT FURTHER RESOLVED, that all contracted work will be charged to and paid from Fund Department Account And Organization Number 5052 (Water & Wastewater Renewal & Extension Fund) 170203 DWM Wastewater Treatment) 5414002 (Facilities Other Than Bldgs/Infrastructure – CIP) 4310000 (Sanitary Administration) and Project Task Award Expenditure and Organization Number 17100392 (General Improvements C) 102 (Task) 505221391 (DWM R N E 9999) 5414002 (Fac Not Bldg CIP) COA.

BE IT FINALLY RESOLVED, that the Agreement will not become binding on the City and the City will incur no obligation nor liability under it until it has been executed by the Mayor, attested to by the Municipal Clerk, approved as to form by the City Attorney and delivered to the USACE.

Part II: Legislative White Paper: (This portion of the Legislative Request Form will be shared with City Council members and staff)

A. To be completed by Legislative Counsel:

Committee of Purview: City Utilities Committee

Caption: A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN COST SHARE AGREEMENT WITH THE UNITED STATES ARMY CORPS OF ENGINEERS ("USACE") TO FUND A WATERSHED RIVER INTAKE AND EROSION CONTROL IMPROVEMENT PROJECT FOR DEFOORS ISLAND IN AN AMOUNT NOT TO EXCEED TWO MILLION DOLLARS AND NO CENTS (\$2,000,000.00); ALL CONTRACTED WORK WILL BE CHARGED TO AND PAID FROM FUND DEPARTMENT ACCOUNT AND ORGANIZATION NUMBER 5052 (WATER & WASTEWATER RENEWAL & EXTENSION FUND) 170203 (DWM WASTEWATER TREATMENT) 5414002 (FACILITIES OTHER THAN BLDGS/INFRASTRUCTURE - CIP) 4310000 (SANITARY ADMINISTRATION) AND PROJECT TASK AWARD EXPENDITURE AND ORGANIZATION NUMBER 17100392 (GENERAL IMPROVEMENTS C) 102 (TASK) 505221391 (DWM R N E 9999) 5414002 (FAC NOT BLDG CIP) COA; AND FOR OTHER PURPOSES.

Council Meeting Date: June 7

Requesting Dept.: Watershed Management

B. To be completed by the department:

1. Please provide a summary of the purpose of this legislation (Justification Statement).

Example: *The purpose of this legislation is to anticipate funds from a local assistance grant to purchase child safety seats.*

The purpose of this legislation is to authorize the Mayor to enter into cost share agreement with the US Army Corps of Engineer (USACOE), on behalf of the Department of Watershed Management, in the amount not to exceed five hundred thousand and no cents (\$500,000.00) (25% non-federal share) to fund a River Intake Erosion Control Improvement Project.

2. Please provide background information regarding this legislation.

Example: *The task force of homelessness conducted a study regarding homelessness, its impact and consequences on the City. This resolution reflects the Mayor's desire to open a twenty-four hour center that will respond to the needs of the homelessness in Atlanta.*

The purpose of this project is to install structures to improve the City of Atlanta's Chattahoochee Raw Water Intake and stabilize the eastern bank of the Defoors Island. The existing weir system in the Chattahoochee River consists of an upper sill and lower sill with the Defoors Island in between. The

rehabilitation of the weir system will provide a firm capacity of 222 million gallons per day (MGD) with the largest main out of service during low flow condition.

3. If Applicable/Known:

- (a) **Contract Type (e.g. Professional Services, Construction Agreement, etc):** N/A
- (b) **Source Selection:** N/A
- (c) **Bids/Proposals Due:** N/A
- (d) **Invitations Issued:** N/A
- (e) **Number of Bids:** N/A
- (f) **Proposals Received:** N/A
- (g) **Bidders/Proponents:** N/A
- (h) **Term of Contract:** N/A

4. Fund Account Center (Ex. Name and number): General Improvement Chattahoochee Water Treatment Plant

PTAEO: 17100392.102.505221391.5414002

FDAO: 5052.170203.5414002.4310000.100392.21391

5. Source of Funds: Example: Local Assistance Grant

6. Fiscal Impact: This legislation will result in a reduction in the amount of \$500,000 to

PTAEO: 17100392.102.505221391.5414002

FDAO: 5052.170203.5414002.4310000.100392.21391

Example: This legislation will result in a reduction in the amount of _____ to Fund Account Center Number _____.

7. Method of Cost Recovery:

Examples:

- a. **Revenues generated from the permits required under this legislation will be used to fund the personnel needed to carry out the permitting process.**
- b. **Money obtained from a local assistance grant will be used to cover the costs of this Summer Food Program.**

This Legislative Request Form Was Prepared By: Seham Abdulahad/Sharon Matthews

Exhibit "A"

AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
CITY OF ATLANTA, GEORGIA
FOR
DESIGN AND CONSTRUCTION
ASSISTANCE
FOR THE
ENVIRONMENTAL INFRASTRUCTURE – CHATTAHOOCHEE RIVER INTAKE
AND EROSION STABILIZATION PROJECT
CITY OF ATLANTA, GEORGIA

THIS AGREEMENT is entered into this _____ day of _____, _____, by and between the Department of the Army (hereinafter the "Government"), represented by the US Army Engineer, Mobile District and City of Atlanta, Georgia (hereinafter the "Non-Federal Sponsor"), represented by the City of Atlanta.

WITNESSETH, THAT:

WHEREAS, the Secretary of the Army is authorized to provide design and construction assistance for designated water-related environmental infrastructure and resource protection and development projects pursuant to Section 219 of the Water Resources Development Act of 1992, Public Law 102-580, as amended (hereinafter the "Section 219 Program");

WHEREAS, the provision of design and construction assistance for the Chattahoochee River Intake and Erosion Stabilization Project (hereinafter the "*Project*", as defined in Article I.A. of this Agreement) in the City of Atlanta, Georgia was authorized by Section 219(c)(2) and Section 219(e)(5) of the Water Resources Development Act of 1992, Public Law 102-580, as amended;

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into an agreement (hereinafter the "Agreement") for the provision of design and construction assistance for the *Project*;

WHEREAS, Section 219 of the Water Resources Development Act of 1992, Public Law 102-580, as amended, specifies the cost-sharing requirements applicable to the *Project*;

WHEREAS, Section 219(d) of the Water Resources Development Act of 1992, Public Law 102-580, as amended, provides that \$30,000,000 in Federal funds is authorized to be appropriated for providing technical, planning, and design assistance for all projects listed in Section 219(c) of such Act; and Section 219(e)(5) of the Water Resources Development Act of 1992, Public Law 102-580, as amended, provides that

\$25,000,000 in Federal Funds is authorized to be appropriated for providing construction assistance for the *Project*;

WHEREAS, the Government and Non-Federal Sponsor have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost sharing and financing of the *Project* in accordance with the terms of this Agreement; and

WHEREAS, the Government and the Non-Federal Sponsor, in connection with this Agreement, desire to foster a partnering strategy and a working relationship between the Government and the Non-Federal Sponsor through a mutually developed formal strategy of commitment and communication embodied herein, which creates an environment where trust and teamwork prevent disputes, foster a cooperative bond between the Government and the Non-Federal Sponsor, and facilitate the successful implementation of the *Project*.

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree as follows:

ARTICLE I - DEFINITIONS

A. The term "*Project*" shall mean Chattahoochee River Intake and Erosion Stabilization Project, City of Atlanta, Georgia as generally described in the Letter Report for Environmental Infrastructure Assistance Program, Section 219 of WRDA 1992, as amended – Atlanta Environmental Infrastructure, City of Atlanta, Georgia, January 5, 2010, and approved by Colonel Byron G. Jorns, Colonel, Corps of Engineers, Commanding on November 24, 2009.

B. The term "*total project costs*" shall mean the sum of all costs incurred by the Non-Federal Sponsor and the Government in accordance with the terms of this Agreement directly related to design and construction of the *Project*. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: the Government's design costs not incurred pursuant to any other agreement for the *Project*; the Government's costs of preparation of environmental compliance documentation in accordance with Article II.A.2 of this Agreement; the Non-Federal Sponsor's and the Government's costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XIV.A. of this Agreement; the Government's costs of historic preservation activities in accordance with Article XVII.A. and Article XVII.B.1. of this Agreement; the Government's actual construction costs; the Government's supervision and administration costs; the Non-Federal Sponsor's and the Government's costs of participation in the Project Coordination Team in accordance with Article V of this Agreement; the Government's costs of contract dispute settlements or awards; the value of lands, easements, rights-of-way, and *relocations* for which the Government affords credit in accordance with Article IV of this Agreement but not to exceed 25 percent of total project costs; and the Non-Federal Sponsor's and the Government's costs of audit in accordance with Article X.B. and Article X.C. of this Agreement. The term does not include any costs for operation, maintenance, repair, rehabilitation, or replacement of the *Project*; any costs of *betterments* under Article

II.H.2. of this Agreement; any costs of dispute resolution under Article VII of this Agreement; the Government's costs for data recovery activities associated with historic preservation in accordance with Article XVII.B.2. and Article XVII.B.3. of this Agreement; or the Non-Federal Sponsor's costs of negotiating this Agreement.

C. The term "*period of design and construction*" shall mean the time from the effective date of this Agreement to the date that construction of the *Project* is complete, as determined by the Government, or the date that this Agreement is terminated in accordance with Article II.C. or Article XIII or Article XIV.C. of this Agreement, whichever is earlier.

D. The term "*financial obligations for design and construction*" shall mean the financial obligations of the Government that result or would result in costs that are or would be included in *total project costs* except for obligations pertaining to the provision of lands, easements, and rights-of-way, and the performance of *relocations*.

E. The term "*non-Federal proportionate share*" shall mean the ratio of the Non-Federal Sponsor's total contribution of funds required by Article II.B.2. of this Agreement to *financial obligations for design and construction*, as projected by the Government.

F. The term "*highway*" shall mean any highway, roadway, street, or way, including any bridge thereof, that is owned by a public entity.

G. The term "*relocation*" shall mean providing a functionally equivalent facility to the owner of a utility, cemetery, *highway*, railroad, or public facility when such action is authorized in accordance with applicable legal principles of just compensation. Providing a functionally equivalent facility may take the form of alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

H. The term "*betterment*" shall mean a difference in the design or construction of an element of the *Project* that results from the application of standards that the Government determines exceed those that the Government would otherwise apply to the design or construction of that element. The term does not include any design or construction for features not included in the *Project* as defined in paragraph A. of this Article.

I. The term "*Federal program funds*" shall mean funds provided by a Federal agency, other than the Department of the Army, plus any non-Federal contribution required as a matching share therefor.

J. The term "*Section 219 Project Limit*" shall mean the statutory limitations on the Government's financial participation in the design and construction of the *Project* as specified in Section 219(d) and Section 219(e) of the Water Resources Development Act of 1992, Public Law 102-580, as amended. As of the effective date of this Agreement, the limitation for design is that portion of the \$30,000,000 of Federal funds authorized to be appropriated in such Section 219(d) that the Government assigns to the *Project* and the limitation for construction is \$25,000,000.

K. The term "*fiscal year*" shall mean one year beginning on October 1 and ending on September 30.

L. The term "*fiscal year of the Non-Federal Sponsor*" shall mean one year beginning on October 1 and ending on September 30.

ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSOR

A. The Government, subject to receiving funds appropriated by the Congress of the United States (hereinafter the "Congress") and using those funds and funds provided by the Non-Federal Sponsor, expeditiously shall design and construct the *Project*, applying those procedures usually applied to Federal projects, in accordance with Federal laws, regulations, and policies.

1. The Government shall not issue the solicitation for the first contract for design of the *Project* or commence design of the *Project* using the Government's own forces until the Non-Federal Sponsor has confirmed in writing its willingness to proceed with the *Project*.

2. The Government shall develop and coordinate as required, an Environmental Assessment and Finding of No Significant Impact or an Environmental Impact Statement and Record of Decision, as necessary, to inform the public regarding the environmental impacts of the *Project* in accordance with the National Environmental Policy Act of 1969 (hereinafter "NEPA") (42 U.S.C. 4321-4370e). However, the Government shall not issue the solicitation for the first construction contract for the *Project* or commence construction of the *Project* using the Government's own forces until all applicable environmental laws and regulations have been complied with, including, but not limited to NEPA and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341).

3. The Government shall afford the Non-Federal Sponsor the opportunity to review and comment on the solicitations for all contracts, including relevant plans and specifications, prior to the Government's issuance of such solicitations. To the extent possible, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on all proposed contract modifications, including change orders. In any instance where providing the Non-Federal Sponsor with notification of a contract modification is not possible prior to execution of the contract modification, the Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the Non-Federal Sponsor the opportunity to review and comment on all contract claims prior to resolution thereof. The Government shall consider in good faith the comments of the Non-Federal Sponsor, but the contents of solicitations, award of contracts or commencement of design or construction using the Government's own forces, execution of contract modifications, resolution of contract claims, and

performance of all work on the *Project* shall be exclusively within the control of the Government.

4. At the time the U.S. Army Engineer, Mobile District (hereinafter the "District Engineer") furnishes the contractor with the Government's Written Notice of Acceptance of Completed Work for each contract awarded by the Government for the *Project*, the District Engineer shall furnish a copy thereof to the Non-Federal Sponsor.

B. The Non-Federal Sponsor shall contribute 25 percent of *total project costs* in accordance with the provisions of this paragraph.

1. In accordance with Article III of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, and rights-of-way, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, and shall perform or ensure performance of all *relocations* that the Government determines to be required or to be necessary for construction, operation, and maintenance of the *Project*.

2. The Non-Federal Sponsor shall provide additional funds in accordance with Article VI.B. of this Agreement in the amount necessary to meet the Non-Federal Sponsor's required share of 25 percent of *total project costs* if the Government projects at any time that the collective value of the following contributions will be less than such required share: (a) the value of the Non-Federal Sponsor's contributions under paragraph B.1. of this Article, as determined in accordance with Article IV of this Agreement that do not exceed 25 percent of *total project costs*; and (b) the value of the Non-Federal Sponsor's contributions under Article V, Article X, and Article XIV.A. of this Agreement.

3. The Government, subject to the availability of funds and as limited by the *Section 219 Project Limit*, shall refund or reimburse to the Non-Federal Sponsor any contributions in excess of 25 percent of *total project costs* if the Government determines at any time that the collective value of the following contributions has exceeded 25 percent of *total project costs*: (a) the value of the Non-Federal Sponsor's contributions under paragraph B.2. of this Article; (b) the value of the Non-Federal Sponsor's contributions under paragraph B.1. of this Article, as determined in accordance with Article IV of this Agreement that do not exceed 25 percent of *total project costs*; and (c) the value of the Non-Federal Sponsor's contributions under Article V, Article X, and Article XIV.A. of this Agreement.

C. Notwithstanding any other provision of this Agreement, Federal financial participation in the *Project* is limited by the following provisions of this paragraph.

1. As of the effective date of this Agreement, \$1,456,755 of Federal funds is currently projected to be available for the *Project*. The Government makes no commitment to request Congress to provide additional Federal funds for the *Project*. Further, the Government's financial participation in the *Project* is limited to the Federal funds that the Government makes available to the *Project*.

2. In the event the Government projects that the amount of Federal funds the Government will make available to the *Project* through the then-current *fiscal year*, or the amount of Federal funds the Government will make available for the *Project* through the upcoming *fiscal year*, is not sufficient to meet the Federal share of *total project costs* and the Federal share of costs for data recovery activities associated with historic preservation in accordance with Article XVII.B.2. and Article XVII.B.3. of this Agreement that the Government projects to be incurred through the then-current or upcoming *fiscal year*, as applicable, the Government shall notify the Non-Federal Sponsor in writing of such insufficiency of funds and of the date the Government projects that the Federal funds that will have been made available to the *Project* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Project*, future performance under this Agreement shall be suspended and the parties shall proceed in accordance with Article XIII.B. of this Agreement.

3. If the Government determines that the total amount of Federal funds provided by Congress for the *Project* has reached the *Section 219 Project Limit*, and the Government projects that the Federal funds the Government will make available to the *Project* within the *Section 219 Project Limit* will not be sufficient to meet the Federal share of *total project costs* and the Federal share of costs for data recovery activities associated with historic preservation in accordance with Article XVII.B.2. and Article XVII.B.3. of this Agreement, the Government shall notify the Non-Federal Sponsor in writing of such insufficiency of funds and of the date the Government projects that the Federal funds that will have been made available to the *Project* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Project* within the *Section 219 Project Limit*, the parties shall terminate this Agreement and proceed in accordance with Article XIII.E. of this Agreement.

D. When the District Engineer determines that the entire *Project*, or a portion thereof, is complete, the District Engineer shall so notify the Non-Federal Sponsor in writing and furnish the Non-Federal Sponsor with a final Operation, Maintenance, Repair, Rehabilitation, and Replacement Manual (hereinafter the "OMRR&R Manual") or, if the final OMRR&R Manual is not available, an interim OMRR&R Manual for the entire *Project* or such completed portion. Upon such notification, the Government also shall furnish to the Non-Federal Sponsor a copy of all final as-built drawings for the entire *Project* or such completed portion if such drawings are available. Not later than 6 months after such notification by the Government that the entire *Project* is complete, the Government shall furnish the Non-Federal Sponsor with the final OMRR&R Manual and all final as-built drawings for the entire *Project*. In the event the final OMRR&R Manual or all final as-built drawings for the entire *Project* cannot be completed within the 6 month period, the Government shall provide written notice to the Non-Federal Sponsor, and the Government and the Non-Federal Sponsor shall negotiate an acceptable completion date for furnishing such documents. Further, after completion of all contracts for the *Project*, copies of all of the Government's Written Notices of Acceptance of Completed Work for all contracts for the *Project* that have not been provided previously shall be provided to the Non-Federal Sponsor.

Exhibit "A"

E. Upon notification from the District Engineer in accordance with paragraph D. of this Article, the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the entire *Project*, or the completed portion thereof as the case may be, in accordance with Article VIII of this Agreement.

F. Upon conclusion of the *period of design and construction*, the Government shall conduct an accounting, in accordance with Article VI.C. of this Agreement, and furnish the results to the Non-Federal Sponsor.

G. The Non-Federal Sponsor shall not use *Federal program funds* to meet any of its obligations for the *Project* under this Agreement unless the Federal agency providing the Federal portion of such funds verifies in writing that expenditure of such funds for such purpose is expressly authorized by Federal law.

H. The Non-Federal Sponsor may request the Government to perform or provide, on behalf of the Non-Federal Sponsor, one or more of the services (hereinafter the "additional work") described in this paragraph. Such requests shall be in writing and shall describe the additional work requested to be performed or provided. If in its sole discretion the Government elects to perform or provide the requested additional work or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs of the additional work performed or provided by the Government under this paragraph and shall pay all such costs in accordance with Article VI.D. of this Agreement.

1. Acquisition of lands, easements, and rights-of-way or performance of *relocations* for the *Project*. Notwithstanding acquisition of lands, easements, and rights-of-way or performance of *relocations* by the Government, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for any costs of cleanup and response in accordance with Article XIV.C. of this Agreement.

2. Inclusion of *betterments* in the design or construction of the *Project*. In the event the Government elects to include any such *betterment*, the Government shall allocate the costs of the *Project* features that include *betterments* between *total project costs* and the costs of the *betterments*.

ARTICLE III - LANDS, EASEMENTS, RIGHTS-OF-WAY, RELOCATIONS, AND COMPLIANCE WITH PUBLIC LAW 91-646, AS AMENDED

A. The Government, after consultation with the Non-Federal Sponsor, shall determine the lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Project*, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including

maps as appropriate, of the lands, easements, and rights-of-way that the Government determines the Non-Federal Sponsor must provide, in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with acquisition of such lands, easements, and rights-of-way. Prior to the issuance of the solicitation for each Government contract for construction of the *Project*, or prior to the Government incurring any *financial obligations for design and construction* of a portion of the *Project* using the Government's own forces, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way the Government determines the Non-Federal Sponsor must provide for that work and shall provide the Government with authorization for entry thereto. Furthermore, prior to the end of the *period of design and construction*, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Project*, as set forth in such descriptions, and shall provide the Government with authorization for entry thereto. The Non-Federal Sponsor shall ensure that lands, easements, and rights-of-way that the Government determines to be required for the *Project* and that were provided by the Non-Federal Sponsor are retained in public ownership for uses compatible with the authorized purposes of the *Project*.

B. The Government, after consultation with the Non-Federal Sponsor, shall determine the *relocations* necessary for construction, operation, and maintenance of the *Project*, including those necessary to enable the borrowing of material or the disposal of dredged or excavated material. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such *relocations* in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with such *relocations*. Prior to the issuance of the solicitation for each Government contract for construction of the *Project*, or prior to the Government incurring any *financial obligations for design and construction* of a portion of the *Project* using the Government's own forces, the Non-Federal Sponsor shall prepare or ensure the preparation of plans and specifications for, and perform or ensure the performance of, all *relocations* the Government determines to be necessary for that work. Furthermore, prior to the end of the *period of design and construction*, the Non-Federal Sponsor shall perform or ensure performance of all *relocations* as set forth in such descriptions.

C. The Non-Federal Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4601-4655), and the Uniform Regulations contained in 49 C.F.R. Part 24, in acquiring lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Project*, including those required for *relocations*, the borrowing of material, or the disposal of dredged or excavated material, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

ARTICLE IV - CREDIT FOR VALUE OF LANDS, EASEMENTS,
RIGHTS-OF-WAY, AND RELOCATIONS

A. The Government shall include in *total project costs* and afford credit toward the Non-Federal Sponsor's share of *total project costs* for the value of the lands, easements, and rights-of-way that the Non-Federal Sponsor must provide pursuant to Article III.A. of this Agreement and for the value of the *relocations* that the Non-Federal Sponsor must perform or for which it must ensure performance pursuant to Article III.B. of this Agreement. However, no amount shall be included in *total project costs* and no credit shall be afforded for the value of any lands, easements, rights-of-way, or *relocations* that have been provided previously as an item of cooperation for another Federal project. In addition, no amount shall be included in *total project costs* and no credit shall be afforded for the value of lands, easements, rights-of-way, or *relocations* that were acquired or performed using *Federal program funds* unless the Federal agency providing the Federal portion of such funds verifies in writing that affording credit for the value of such items is expressly authorized by Federal law. Finally, no amount shall be included in *total project costs*, no credit shall be afforded pursuant to this Article, and no reimbursement shall be provided to the Non-Federal Sponsor, for any value in excess of 25 percent of *total project costs*.

B. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the value of any contribution provided pursuant to Article III.A. or Article III.B. of this Agreement. Upon receipt of such documents, the Government in a timely manner shall determine the value of such contributions and include in *total project costs* the amount of such value that does not exceed 25 percent of *total project costs*.

C. For the purposes of determining the value to be included in *total project costs* and the amount of credit to be afforded in accordance with this Article and except as otherwise provided in paragraph E. of this Article, the value of lands, easements, and rights-of-way, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, shall be the fair market value of the real property interests, plus certain incidental costs of acquiring those interests, as determined in accordance with the provisions of this paragraph.

1. Date of Valuation. The fair market value of lands, easements, or rights-of-way owned by the Non-Federal Sponsor on the effective date of this Agreement shall be the fair market value of such real property interests as of the date the Non-Federal Sponsor provides the Government with authorization for entry thereto. The fair market value of lands, easements, or rights-of-way acquired by the Non-Federal Sponsor after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

2. General Valuation Procedure. Except as provided in paragraph C.3. or paragraph C.5. of this Article, the fair market value of lands, easements, or rights-of-way shall be determined in accordance with the provisions of this paragraph.

a. The Non-Federal Sponsor shall obtain, for each real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the Non-Federal Sponsor and the Government. The Non-Federal Sponsor shall provide the Government with the appraisal no later than 6 months after the Non-Federal Sponsor provides the Government with an authorization for entry for such real property interest. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. The fair market value shall be the amount set forth in the Non-Federal Sponsor's appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's appraisal, the Non-Federal Sponsor may obtain a second appraisal, and the fair market value shall be the amount set forth in the Non-Federal Sponsor's second appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's second appraisal, the Non-Federal Sponsor chooses not to obtain a second appraisal, or the Non-Federal Sponsor does not provide the first appraisal as required in this paragraph, the Government shall obtain an appraisal, and the fair market value shall be the amount set forth in the Government's appraisal, if such appraisal is approved by the Non-Federal Sponsor. In the event the Non-Federal Sponsor does not approve the Government's appraisal, the Government, after consultation with the Non-Federal Sponsor, shall consider the Government's and the Non-Federal Sponsor's appraisals and determine an amount based thereon, which shall be deemed to be the fair market value.

b. Where the amount paid or proposed to be paid by the Non-Federal Sponsor for the real property interest exceeds the amount determined pursuant to paragraph C.2.a. of this Article, the Government, at the request of the Non-Federal Sponsor, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsor, may approve in writing an amount greater than the amount determined pursuant to paragraph C.2.a. of this Article, but not to exceed the amount actually paid or proposed to be paid. If the Government approves such an amount, the fair market value shall be the lesser of the approved amount or the amount paid by the Non-Federal Sponsor, but no less than the amount determined pursuant to paragraph C.2.a. of this Article.

3. Eminent Domain Valuation Procedure. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor, prior to instituting such proceedings, shall submit to the Government notification in writing of its intent to institute such proceedings and an appraisal of the specific real property interests to be acquired in such proceedings. The Government shall have 60 calendar days after receipt of such a notice and appraisal within which to review the appraisal, if not previously approved by the Government in writing.

a. If the Government previously has approved the appraisal in writing, or if the Government provides written approval of, or takes no action on, the appraisal within such 60 day period, the Non-Federal Sponsor shall use the amount set forth in such appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

b. If the Government provides written disapproval of the appraisal, including the reasons for disapproval, within such 60 day period, the Government and the Non-Federal Sponsor shall consult in good faith to promptly resolve the issues or areas of disagreement that are identified in the Government's written disapproval. If, after such good faith consultation, the Government and the Non-Federal Sponsor agree as to an appropriate amount, then the Non-Federal Sponsor shall use that amount as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If, after such good faith consultation, the Government and the Non-Federal Sponsor cannot agree as to an appropriate amount, then the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

c. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted in accordance with paragraph C.3. of this Article, fair market value shall be either the amount of the court award for the real property interests taken, to the extent the Government determined such interests are required for construction, operation, and maintenance of the *Project*, or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

4. Incidental Costs. For lands, easements, or rights-of-way acquired by the Non-Federal Sponsor within a five year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, the value of the interest shall include the documented incidental costs of acquiring the interest, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. In the event the Government modifies its determination made pursuant to Article III.A. of this Agreement, the Government shall afford credit for the documented incidental costs associated with preparing to acquire the lands, easements, or rights-of-way identified in the original determination, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Such incidental costs shall include, but not necessarily be limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, mapping costs, actual amounts expended for payment of any relocation assistance benefits provided in accordance with Article III.C. of this Agreement, and other payments by the Non-Federal Sponsor for items that are generally recognized as compensable, and required to be paid, by applicable state law due to the acquisition of a real property interest in accordance with Article III of this Agreement. The value of the interests provided by the Non-Federal Sponsor in accordance with Article III.A. of this Agreement shall also include the documented costs of obtaining appraisals pursuant to paragraph C.2. of this Article, as determined by the Government, and subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

5. Waiver of Appraisal. Except as required by paragraph C.3. of this Article, the Government may waive the requirement for an appraisal pursuant to this paragraph if it determines that an appraisal is unnecessary because the valuation is uncomplicated and that the estimated fair market value of the real property interest is \$10,000 or less based upon a review of available data. In such event, the Government

and the Non-Federal Sponsor must agree in writing to the value of such real property interest in an amount not in excess of \$10,000.

D. After consultation with the Non-Federal Sponsor, the Government shall determine the value of *relocations* in accordance with the provisions of this paragraph.

1. For a *relocation* other than a *highway*, the value shall be only that portion of *relocation* costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

2. For a *relocation* of a *highway*, the value shall be only that portion of *relocation* costs that would be necessary to accomplish the *relocation* in accordance with the design standard that the State of Georgia would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

3. *Relocation* costs shall include, but not necessarily be limited to, actual costs of performing the *relocation*; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with performance of the *relocation*, as determined by the Government. *Relocation* costs shall not include any costs due to *betterments*, as determined by the Government, nor any additional cost of using new material when suitable used material is available. *Relocation* costs shall be subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

4. Any credit afforded under the terms of this Agreement for the value of *relocations* performed within the *Project* boundaries is subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)). Notwithstanding any other provision of this Agreement, credit may be withheld, in whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws.

E. Where the Government, on behalf of the Non-Federal Sponsor pursuant to Article II.H.1. of this Agreement, acquires lands, easements, or rights-of-way, or performs *relocations*, the value to be included in *total project costs* and the amount of credit to be afforded in accordance with this Agreement shall be the costs of such work performed or provided by the Government that are paid by the Non-Federal Sponsor in accordance with Article VI.D. of this Agreement. In addition, the value to be included in *total project costs* and the amount of such credit to be afforded in accordance with this Agreement shall include the documented costs incurred by the Non-Federal Sponsor in accordance with the terms and conditions agreed upon in writing pursuant to Article

II.H.1. of this Agreement subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

ARTICLE V - PROJECT COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal Sponsor and the Government, not later than 30 calendar days after the effective date of this Agreement, shall appoint named senior representatives to a Project Coordination Team. Thereafter, the Project Coordination Team shall meet regularly until the end of the *period of design and construction*. The Government's Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the Project Coordination Team.

B. The Government's Project Manager and the Non-Federal Sponsor's counterpart shall keep the Project Coordination Team informed of the progress of design and construction and of significant pending issues and actions, and shall seek the views of the Project Coordination Team on matters that the Project Coordination Team generally oversees.

C. Until the end of the *period of design and construction*, the Project Coordination Team shall generally oversee the *Project*, including matters related to: design; completion of all necessary NEPA coordination; plans and specifications; scheduling; real property and *relocation* requirements; real property acquisition; contract awards and modifications; contract costs; the application of and compliance with 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)) for *relocations*; the investigations to identify the existence and extent of hazardous substances in accordance with Article XIV.A. of this Agreement; historic preservation activities in accordance with Article XVII of this Agreement; the Government's cost projections; final inspection of the entire *Project* or completed portions thereof as the case may be; preparation of the proposed OMRR&R Manual; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, rehabilitation, and replacement of the *Project* including issuance of permits; and other matters related to the *Project*. This oversight of the *Project* shall be consistent with a project management plan developed by the Government after consultation with the Non-Federal Sponsor.

D. The Project Coordination Team may make recommendations to the District Engineer on matters related to the *Project* that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Project Coordination Team. The Government, having the legal authority and responsibility for design and construction of the *Project*, has the discretion to accept or reject, in whole or in part, the Project Coordination Team's recommendations.

E. The Non-Federal Sponsor's costs of participation in the Project Coordination Team shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. The Government's costs of participation in the Project Coordination Team shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

ARTICLE VI - METHOD OF PAYMENT

A. In accordance with the provisions of this paragraph, the Government shall maintain current records and provide to the Non-Federal Sponsor current projections of costs, financial obligations, contributions provided by the parties, and the value included in *total project costs* for the value of lands, easements, rights-of-way, and *relocations* determined in accordance with Article IV of this Agreement.

1. As of the effective date of this Agreement, *total project costs* are projected to be \$1,942,340; the Non-Federal Sponsor's contribution of funds required by Article II.B.2. of this Agreement is projected to be \$485,585; the *non-Federal proportionate share* is projected to be 25 percent; the Non-Federal Sponsor's contribution of funds required by Article XVII.B.3. of this Agreement includes the value of lands, easements, rights-of-way, and *relocations* determined in accordance with Article IV of this Agreement. These amounts and percentage are estimates subject to adjustment by the Government, after consultation with the Non-Federal Sponsor, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

2. By March 1, 2010 and by each quarterly anniversary thereof until the conclusion of the *period of design and construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of the following: *total project costs*; the Non-Federal Sponsor's total contribution of funds required by Article II.B.2. of this Agreement; the *non-Federal proportionate share*; the Non-Federal Sponsor's total contribution of funds required by Article XVII.B.3. of this Agreement; the total contribution of funds required from the Non-Federal Sponsor for the upcoming contract and upcoming *fiscal year*; the value included in *total project costs* for the value of lands, easements, rights-of-way, and *relocations* determined in accordance with Article IV of this Agreement; and the Government's total financial obligations for additional work incurred and the Non-Federal Sponsor's contribution of funds for such costs required by Article II.H. of this Agreement.

B. The Non-Federal Sponsor shall provide the contributions of funds required by Article II.B.2. and Article XVII.B.3. of this Agreement in accordance with the provisions of this paragraph.

1. Not less than 30 calendar days prior to the scheduled date for issuance of the solicitation for the first contract for design of the *Project* or commencement of design of the *Project* using the Government's own forces, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and the funds the Government determines to be required from the Non-Federal Sponsor to meet its projected share under Article II.B.2. and Article XVII.B.3. of this Agreement. Not later than such scheduled date, the Non-Federal Sponsor shall provide the Government with the full amount of such required funds by delivering a check payable to "FAO, USAED, Mobile District – K5" to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or by presenting the Government with an irrevocable letter of credit acceptable to the Government for such required funds, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

2. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover: (a) the *non-Federal proportionate share of financial obligations for design and construction* incurred prior to the commencement of the *period of design and construction*; (b) the *non-Federal proportionate share of financial obligations for design and construction as financial obligations for design and construction* are incurred; and (c) the Non-Federal Sponsor's share of financial obligations for data recovery activities associated with historic preservation pursuant to Article XVII.B.3. of this Agreement as those financial obligations are incurred. If at any time the Government determines that additional funds will be needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor's share of such financial obligations, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Within 60 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

C. Upon conclusion of the *period of design and construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting from being conducted in a timely manner, the Government shall conduct an interim accounting and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals and eminent domain proceedings are resolved, the Government shall amend the interim accounting to complete the final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. The interim or final accounting, as applicable, shall determine *total project costs* and the costs of any data recovery activities associated with historic preservation. In addition, for each set of costs, the interim or final accounting, as applicable, shall determine each party's required share thereof, and each party's total contributions thereto as of the date of such accounting.

Exhibit "A"

1. Should the interim or final accounting, as applicable, show that the Non-Federal Sponsor's total required shares of *total project costs* and the costs of any data recovery activities associated with historic preservation exceed the Non-Federal Sponsor's total contributions provided thereto, the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, Mobile District – K5" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

2. Should the interim or final accounting, as applicable, show that the total contributions provided by the Non-Federal Sponsor for *total project costs* and the costs of any data recovery activities associated with historic preservation exceed the Non-Federal Sponsor's total required shares thereof, the Government, subject to the availability of funds and as limited by the *Section 219 Project Limit*, shall refund or reimburse the excess amount to the Non-Federal Sponsor within 90 calendar days of the date of completion of such accounting. In the event the Non-Federal Sponsor is due a refund or reimbursement and funds are not available to refund or reimburse the excess amount to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund or reimbursement.

D. The Non-Federal Sponsor shall provide the contribution of funds required by Article II.H. of this Agreement for additional work in accordance with the provisions of this paragraph.

1. Not less than 60 calendar days prior to the scheduled date for the first financial obligation for additional work, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and of the full amount of funds the Government determines to be required from the Non-Federal Sponsor to cover the costs of the additional work. No later than 30 calendar days prior to the Government incurring any financial obligation for additional work, the Non-Federal Sponsor shall provide the Government with the full amount of the funds required to cover the costs of such additional work through any of the payment mechanisms specified in paragraph B.1. of this Article.

2. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover the Government's financial obligations for such additional work as they are incurred. If at any time the Government determines that the Non-Federal Sponsor must provide additional funds to pay for such additional work, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Within 30 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

3. At the time the Government conducts the interim or final accounting, as applicable, the Government shall conduct an accounting of the Government's financial obligations for additional work incurred and furnish the Non-Federal Sponsor with written notice of the results of such accounting. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting of additional work from being conducted in a timely manner, the Government shall conduct an interim accounting of additional work and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals and eminent domain proceedings are resolved, the Government shall amend the interim accounting of additional work to complete the final accounting of additional work and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. Such interim or final accounting, as applicable, shall determine the Government's total financial obligations for additional work and the Non-Federal Sponsor's contribution of funds provided thereto as of the date of such accounting.

a. Should the interim or final accounting, as applicable, show that the total obligations for additional work exceed the total contribution of funds provided by the Non-Federal Sponsor for such additional work, the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, Mobile District - K5" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

b. Should the interim or final accounting, as applicable, show that the total contribution of funds provided by the Non-Federal Sponsor for additional work exceeds the total obligations for such additional work, the Government, subject to the availability of funds, shall refund the excess amount to the Non-Federal Sponsor within 90 calendar days of the date of completion of such accounting. In the event the Non-Federal Sponsor is due a refund and funds are not available to refund the excess amount to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund.

ARTICLE VII - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE VIII - OPERATION, MAINTENANCE, REPAIR, REHABILITATION,
AND REPLACEMENT (OMRR&R)

A. Upon receipt of the notification from the District Engineer in accordance with Article II.D. of this Agreement and for so long as the *Project* remains authorized, the Non-Federal Sponsor, pursuant to Article II.E. of this Agreement, shall operate, maintain, repair, rehabilitate, and replace the entire *Project* or a completed portion thereof as the case may be, at no cost to the Government. The Non-Federal Sponsor shall conduct its operation, maintenance, repair, rehabilitation, and replacement responsibilities in a manner compatible with the *Project's* authorized purposes and in accordance with specific directions prescribed by the Government in the interim or final OMRR&R Manual and any subsequent amendments thereto.

B. The Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor now or hereafter owns or controls for access to the *Project* for the purpose of inspection, if the Government determines an inspection to be necessary. If an inspection shows that the Non-Federal Sponsor for any reason is failing to perform its obligations under this Agreement, the Government shall send a written notice describing the non-performance to the Non-Federal Sponsor.

ARTICLE IX – HOLD AND SAVE

The Non-Federal Sponsor shall hold and save the Government free from all damages arising from design, construction, operation, maintenance, repair, rehabilitation, and replacement of the *Project* and any *betterment*, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE X - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Non-Federal Sponsor shall develop procedures for keeping books, records, documents, or other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the Non-Federal Sponsor shall maintain such books, records, documents, or other evidence in accordance with these procedures and for a minimum of three years after completion of the accounting for which such books, records, documents, or other evidence were required. To the extent permitted under applicable Federal laws and regulations, the Government and the Non-Federal Sponsor shall each allow the other to inspect such books, records, documents, or other evidence.

B. In accordance with 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), as implemented by Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsor and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs as are allocated to the *Project* shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor is required to conduct under the Single Audit Act Amendments of 1996. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

ARTICLE XI - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government shall comply with all applicable Federal and State laws and regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d) and Department of Defense Directive 5500.11 issued pursuant thereto; Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army"; and all applicable Federal labor standards requirements including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)).

ARTICLE XII - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights the other party may have to seek relief or redress

against that contractor either pursuant to any cause of action that the other party may have or for violation of any law.

ARTICLE XIII - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend future performance under this Agreement unless he determines that continuation of work on the *Project* is in the interest of the United States.

B. In the event future performance under this Agreement is suspended pursuant to Article II.C.2. of this Agreement, such suspension shall remain in effect until such time that the Government notifies the Non-Federal Sponsor in writing that sufficient Federal funds are available to meet the Federal share of *total project costs* and the Federal share of costs for data recovery activities associated with historic preservation in accordance with Article XVII.B.2. and Article XVII.B.3. of this Agreement the Government projects to be incurred through the then-current or upcoming *fiscal year*, or the Government or the Non-Federal Sponsor elects to terminate this Agreement.

C. In the event that the Government and the Non-Federal Sponsor determine to suspend future performance under this Agreement in accordance with Article XIV.C. of this Agreement, such suspension shall remain in effect until the Government and the Non-Federal Sponsor agree to proceed or to terminate this Agreement. In the event that the Government suspends future performance under this Agreement in accordance with Article XIV.C. of this Agreement due to failure to reach agreement with the Non-Federal Sponsor on whether to proceed or to terminate this Agreement, or the failure of the Non-Federal Sponsor to provide funds to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under Article XIV.C. of this Agreement, such suspension shall remain in effect until: 1) the Government and Non-Federal Sponsor reach agreement on how to proceed or to terminate this Agreement; 2) the Non-Federal Sponsor provides funds necessary to pay for cleanup and response costs and otherwise discharges its responsibilities under Article XIV.C. of this Agreement; 3) the Government continues work on the *Project*; or 4) the Government terminates this Agreement in accordance with the provisions of Article XIV.C. of this Agreement.

D. If after completion of the design portion of the *Project* the parties mutually agree in writing not to proceed with construction of the *Project*, the parties shall conclude their activities relating to the *Project* and conduct an accounting in accordance with Article VI.C. of this Agreement.

E. In the event that this Agreement is terminated pursuant to this Article or Article II.C. or Article XIV.C. of this Agreement, both parties shall conclude their activities relating to the *Project* and conduct an accounting in accordance with Article VI.C. of this Agreement. To provide for this eventuality, the Government may reserve a percentage of total Federal funds made available for the *Project* and an equal percentage of the total

funds contributed by the Non-Federal Sponsor in accordance with Article II.B.2. and Article XVII.B.3. of this Agreement as a contingency to pay costs of termination, including any costs of resolution of contract claims and contract modifications.

F. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article II.C. or Article XIV.C. of this Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Non-Federal Sponsor shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

ARTICLE XIV - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and upon direction by the District Engineer, the Non-Federal Sponsor shall perform, or ensure performance of, any investigations for hazardous substances that the Government or the Non-Federal Sponsor determines to be necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA") (42 U.S.C. 9601-9675), that may exist in, on, or under lands, easements, and rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for construction, operation, and maintenance of the *Project*. However, for lands, easements, and rights-of-way that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Engineer provides the Non-Federal Sponsor with prior specific written direction, in which case the Non-Federal Sponsor shall perform such investigations in accordance with such written direction.

1. All actual costs incurred by the Non-Federal Sponsor for such investigations for hazardous substances shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

2. All actual costs incurred by the Government for such investigations for hazardous substances shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

B. In the event it is discovered through any investigation for hazardous substances or other means that hazardous substances regulated under CERCLA exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for construction, operation, and maintenance of the *Project*, the Non-Federal Sponsor and the Government, in addition to providing any other notice required by applicable law, shall provide prompt written notice to each other, and the

Exhibit "A"

Non-Federal Sponsor shall not proceed with the acquisition of the real property interests until the parties agree that the Non-Federal Sponsor should proceed.

C. The Government and the Non-Federal Sponsor shall determine whether to initiate construction of the *Project*, or, if already in construction, whether to continue with construction of the *Project*, suspend future performance under this Agreement, or terminate this Agreement for the convenience of the Government, in any case where hazardous substances regulated under CERCLA are found to exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for construction, operation, and maintenance of the *Project*. Should the Government and the Non-Federal Sponsor determine to initiate or continue with construction of the *Project* after considering any liability that may arise under CERCLA, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of *total project costs*. In the event the Non-Federal Sponsor does not reach agreement with the Government on whether to proceed or to terminate this Agreement under this paragraph, or fails to provide any funds necessary to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under this paragraph upon direction by the Government, the Government, in its sole discretion, may either terminate this Agreement for the convenience of the Government, suspend future performance under this Agreement, or continue work on the *Project*.

D. The Non-Federal Sponsor and the Government shall consult with each other in accordance with Article V of this Agreement in an effort to ensure that responsible parties bear any necessary cleanup and response costs as defined in CERCLA. Any decision made pursuant to paragraph C. of this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the operator of the *Project* for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the *Project* in a manner that will not cause liability to arise under CERCLA.

ARTICLE XV - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or sent by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Non-Federal Sponsor: City of Atlanta, 55 Trinity Avenue SW, Atlanta, Georgia 30060

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If to the Government: CESAM-PM-C, PO Box 2288, Mobile, AL 36628

B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

ARTICLE XVI - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

ARTICLE XVII - HISTORIC PRESERVATION

A. The Government, as it determines necessary for the *Project*, shall perform any identification, survey, or evaluation of historic properties. Any costs incurred by the Government for such work shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

B. The Government, as it determines necessary for the *Project*, shall perform or ensure the performance of any mitigation activities or actions for historic properties or that are otherwise associated with historic preservation including data recovery activities.

1. Any costs incurred by the Government for such mitigation activities, except for data recovery activities associated with historic preservation, shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

2. As specified in Section 7(a) of Public Law 86-523, as amended by Public Law 93-291 (16 U.S.C. 469c(a)), the costs of data recovery activities associated with historic preservation shall be borne entirely by the Government and shall not be included in *total project costs*, up to the statutory limit of one percent of the total amount authorized to be appropriated to the Government for the *Project*.

3. The Government shall not incur costs for data recovery activities associated with historic preservation that exceed the statutory one percent limit specified in paragraph B.2. of this Article unless and until the Assistant Secretary of the Army (Civil Works) has waived that limit and the Secretary of the Interior has concurred in the waiver in accordance with Section 208(3) of Public Law 96-515, as amended (16 U.S.C. 469c-2(3)). Any costs of data recovery activities associated with historic preservation that exceed the one percent limit shall not be included in *total project costs* but shall be shared between

Exhibit "A"

the Non-Federal Sponsor and the Government consistent with the cost sharing requirements for the Section 219 Program, as follows: 25 percent will be borne by the Non-Federal Sponsor and 75 percent will be borne by the Government.

C. If, during its performance of *relocations* in accordance with Article III of this Agreement, the Non-Federal Sponsor discovers historic properties or other cultural resources that have not been evaluated by the Government pursuant to this Article, the Non-Federal Sponsor shall provide prompt written notice to the Government of such discovery. The Non-Federal Sponsor shall not proceed with performance of the *relocation* that is related to such discovery until the Government provides written notice to the Non-Federal Sponsor that it should proceed with such work.

ARTICLE XVIII - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not party to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the

DEPARTMENT OF THE ARMY

CITY OF ATLANTA, GEORGIA

BY: _____
BYRON G. JORNS
Colonel, US Army
District Engineer
Mobile District

BY: _____
KASIM REED
Mayor, City of Atlanta

DATE: _____

DATE: _____

CERTIFICATE OF AUTHORITY

I, _____, do hereby certify that I am the principal legal officer of the City of Atlanta, Georgia and that the City of Atlanta, Georgia is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the City of Atlanta, Georgia in connection with the Chattahoochee River Intake and Erosion Stabilization Project, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement and that the persons who have executed this Agreement on behalf of the City of Atlanta, Georgia have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this _____ day of _____ 20____.

Attest:

By: _____
Title: _____

(SEAL)

Approved as to form:

By: _____
City Attorney

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Kasim Reed
Mayor, City of Atlanta

DATE: _____

TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE

ATTN: Chief of Staff

Dept.'s Legislative Liaison: _____ Maisha L. Wood _____

Contact Number: _____ (404) 330-6887 _____

Originating Department: _____ Department of Watershed Management _____
Committee(s) of Purview: _____ Finance Executive _____

Chief of Staff Deadline: _____ May 21, 2010 _____

Anticipated Committee Meeting Date(s): _____ June 2, 2010 _____

Anticipated Full Council Date: _____ June 7, 2010 _____

Legislative Counsel's Signature: _____  _____

Commissioner Signature: _____ Robert J. Hunter ^{SP} _____

Chief Procurement Officer Signature: _____ n/a _____

CAPTION

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN COST SHARE AGREEMENT WITH THE UNITED STATES ARMY CORPS OF ENGINEERS ("USACE") TO FUND A WATERSHED RIVER INTAKE AND EROSION CONTROL IMPROVEMENT PROJECT FOR DEFOORS ISLAND IN AN AMOUNT NOT TO EXCEED TWO MILLION DOLLARS AND NO CENTS (\$2,000,000.00); ALL CONTRACTED WORK WILL BE CHARGED TO AND PAID FROM FUND DEPARTMENT ACCOUNT AND ORGANIZATION NUMBER 5052 (WATER & WASTEWATER RENEWAL & EXTENSION FUND) 170203 (DWM WASTEWATER TREATMENT) 5414002 (FACILITIES OTHER THAN BLDGS/INFRASTRUCTURE - CIP) 4310000 (SANITARY ADMINISTRATION) AND PROJECT TASK AWARD EXPENDITURE AND ORGANIZATION NUMBER 17100392 (GENERAL IMPROVEMENTS C) 102 (TASK) 505221391 (DWM R N E 9999) 5414002 (FAC NOT BLDG CIP) COA; AND FOR OTHER PURPOSES.

FINANCIAL IMPACT (if any): \$2,000,000.00

Mayor's Staff Only

Received by CPO: _____ Received by LC from CPO: _____
(date) 5/11/10 (date)

Received by Mayor's Office: _____ Reviewed by: _____
(date) (date)

Submitted to Council: _____ (date)



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ATLANTA CITY COUNCIL

Joyce M. Sheperd
COUNCILMEMBER
DISTRICT 12

55 TRINITY AVENUE, S.W.
SUITE 2900
ATLANTA, GEORGIA 30303
TEL (404) 330-6053
FAX (404) 658-6561
E-MAIL jmsheperd@atlantaga.gov
WEBSITE [Councilmember Sheperd](http://CouncilmemberSheperd.com)

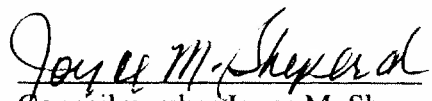
March 16, 2010

Councilmember Felicia Moore
Chair, Committee on Council
Atlanta City Council
55 Trinity Avenue
Atlanta, GA 30303

Dear Chairperson Moore:

Attached is the resume of Ms. Paulette W. Scott who is my nominee for the Keep Atlanta Beautiful Board. Ms. Scott has worked tirelessly in her community and as vice chair of Neighborhood Planning Unit Z. She is eager to participate on the board for the next term.

Sincerely,


Councilmember Joyce M. Sheperd
District 12

Attachment: Paulette A. Scott Resume

Held
PAPERS